Official Gazette

REPUBLIC OF THE PHILIPPINES

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OFFICIAL WEEK IN REVIEW

March 26.—PRESIDENT Garcia started his Lenten fast this morning by taking nothing but milk at breakfast after attending an early Palm Sunday mass aboard the *RPS Lapu-Lapu.*

The yacht was then sailing smoothly towards Cebu City from Iloilo City, where the Chief Executive witnessed the fusion of two big political factions behind his reelection bid.

The President said he was shortening his annual Lenten fast from the usual two weeks to seven days this year upon the advice of his physicians. Newsmen surmised that this advice must have something to do with the President's long hospitalization at the Veterans Memorial Hospital late last year.

The President drank another glass of milk at lunchtime, then another at suppertime. He will start taking nothing but orange juice on Wednesday. The fasting will end on Easter Sunday.

Apparently inspired by his political gains in Iloilo, the President appeard buoyant and witty during his interview with newsmen. Asked to comment on reports about Amang Rodriguez's more conciliatory attitude, the President chuckled: "Politics is very complicated. That's why even if you read the Bible from cover to cover you will not find the word 'politics' in it."

Then when asked by a naughty newsmen if he would endorse Mayor Arsenio H. Lacson, his bitter critic, as his running mate, President Garcia quipped: "There's nothing wrong in hoping against hope."

The *RPS Lapu-Lapu* docked at Cebu City at 3:30 p.m. today. The President and his party will sail back to Manila at midnight tonight.

March 27.—ABOARD the *RPS Lapu-Lapu,* President Garcia and his party are expected to arrive in Manila at 11 p.m. today from a two-day inspection tour of Iloilo and Cebu provinces.

The President, on the second day of his fast,, woke up early this morning and spent the whole day inside his cabin reading the Holy Bible. He subsisted only on milk and water sprinkled with little sugar.

The *Lapu-Lapu* with the presidential party lifted anchor from the Cebu wharf last night and kept steaming at 17.5 knots in an effort to head off an approaching typhoon.

The seas had been smooth since the *Lapu-Lapu* left Cebu midnight last night, but the ship developed slight roll as she began to encounter slight swells and white caps at the Sibuyan Sea and Romblon pass this noon.

The passengers were relieved when informed by Comdr. Manuel Mandapat that typhoon *Tess,* reported to be packing winds with velocity of 100 miles per hour, veered at 2 p.m. and would not come to within 500 miles of the Philippines.

March 28.—PRESIDENT Garcia today ordered Secretary of Justice Alejo Mabanag and the presidential committee on administration performance efficiency to probe thoroughly the forgery of decisions in Manila municipal courts and the other tribunals so that the proper penalties could be meted out on the responsible parties.

The President conferred this morning with Executive Secretary Natalio Castillo on the forgery racket.

In ordering Mabanag and the PCAFE to investigate the anomaly thoroughly, the President said no effort must be spared to stop the perversion

of justice the moment it is discovered. He directed the PCAFE to determine if the irregularity was also rampant in provincial courts.

In his conference with Castillo, the Chief Executive also took up the Senate move to expose alleged kick-backs in the importation of flour.

Following the conference, Secretary Castillo issued a statement denying the alleged racket by some administration leaders as a means of raising funds for the election campaign.

The President arrived in Baguio about 8 o'clock this evening from Manila to spend the Holy Week in the Pines City.

President Garcia today highly praised the Cebu boy who gave up his life in order to save a friend from drowning.

In a letter to Mr. and Mrs. Aniano Cobarde, parents of young Nestor Cobarde, who perished after saving his friend from drowning, the President wrote: "The tragedy is too much to bear on your part, I am sure, but yours is the deserved pride that you brought forth into this world a boy who, though still very young, already practised the virtues that should properly abound in the adult world. I wish I had such a son."

March 29.—PRESIDENT Garcia categorically said today that he favors leaving the management of the Philippine Air Lines to private sector and gave the PAL Board of Directors a period of three months to decide on the best and most acceptable management bid.

The President told newsmen during inmprmptu press conference that it is the standing policy for the government to step out whenever private enterprise is ready to take over.

The appointment of Eduardo Z. Romualdez as PAL president is *ad interim,* the President pointed out, while the Board of Directors determines the cash value of the government shares in the firm prior to the choice of a permanent management from several offers.

Replying to a query from a newsman on whether he would allow Cabinet members reportedly aspiring for the vice-presidential position to testify before the Senate, the President said he left to those concerned to decide whether or not to testify.

The President, who had already lost ten pounds since he started fasting four days ago, started taking today orange juice at mealtime.

The lone caller was Administrator Ramon Gaviola of the Social Security System, who took up joint financing ventures with private enterprise in which the System is interested.

After receiving Gaviola, the President retired to his bedroom to read the Holy Bible and *Life of Christ* by Vincent Sheen.

President Garcia ordered today the immediate release of ₱50,000 from his contingent fund for the relief of the fire victims in the recent fire that razed Laoang, Samar.

The initial amount of ₱50,000 was ordered immediately released through Executive Secretary Natalio P. Castillo.

The President also directed Social Welfare Administrator Mrs. Amparo P. Villamor to extend immediate SWA aid to the fire victims and make a survey of the damage.

The President today congratulated the Philippine delegation headed by Ambassador Eduardo Quintero for getting a substantial reduction of Philippine obligation under the Romulo-Snyder Agreement and for other concessions obtained by the group.

The President dispatched his congratulatory message upon receiving the report sent through cable by Ambassador Quintero from Washington.

In his telegram to the President, Ambassador Quintero reported approval by the United States of:

(1) Claim for expenses of recovered personnel division which was rejected in 1950 and 1951. The claim which amounted to ₱10,860,000 was reduced to ₱9,086,000. This amount would be used to reduce the Philippine obligation under the Romulo-Snyder Agreement, instead of peso-payment

to the Philippine government which would necessitate U.S. congressional action.

(2) Reduction of the Romulo-Snyder obligation by ₱4,996,860.66 which was due to the United States auditors' errors in computation, lifting of suspended account, and transfer of the trust fund to the Philippine government.

March 30.—THE PRESIDENT reiterated today the Philippines' stand against the recognition and admission of Red China to the United Nations.

Replying to questions from newspapermen regarding the Philippine position on the two China proposal, the President said that Red China's membership in the UN would considerably weaken the prestige of Free China, which is also a member of the UN Security Council.

The President said that the proposal, if carried out, would result in serious repercussions in the world body and in Asia and threaten world peace, especially in countries whose large Chinese populations might turn communists.

Citing cases, the President said the Philippines would face graver menace than the suppression of the Huk movement which costs millions of pesos every year.

During his talks with Malacañang newsmen in his stroll around the Mansion House grounds this morning, President Garcia scotched reports that the three-man Nacionalista Party screening committee was snagged. He said according to J. Antonio Araneta, the third neutral member, the committee is working smoothly and had passed upon 350 ex officio delegates out of a total of 1,140 delegates.

While he was not optimistic over the committee's success, the President felt that it should be given a chance to work out a solution for the sake of party unity.

The President spent most of the day in meditation except for short strolls with the First Lady to admire flowers in full bloom in the Mansion House.

President Garcia is now taking milk and fruit juice in the course of his fasting. His fast will end on Easter Sunday, when he will take his first solid meal since he started fasting.

President and Mrs. Garcia this afternoon motored to Holy Ghost hill where they heard the traditional Maundy Thursday mass at the Blue Sisters convent. They also received Holy Communion.

After the mass the President returned to the Guest House, where he continued his Holy Bible reading, while the First Lady went on *visita iglesia* with Mesdames Jose Aldeguer, Joaquin R. Roces, and Macario Asistion.

March 31.—PRESIDENT Garcia Friday directed the Philippine Constabulary to conduct a full dress investigation of alleged gunrunning activities wherein military personnel are linked.

The President issued the directive upon being informed by PC chief Gen. Isagani Campo that politicians are allegedly purchasing guns and ammunitions to build their own private armies. Campo expressed fears that the private armies might be used during the elections.

The President also directed Campo to look into the reported ties between some AFP men and civilians in the gunrunning racket and to render a complete report on the extent of gunrunning activities in the country so that all persons linked may be prosecuted, and remedial measures adopted to curb the racket.

Earlier this morning the President and Mrs. Garcia strolled around the Mansion House ground. In the afternoon the President and the First Lady heard the traditional Seven Last Words at St. Joseph Church.

April 1.—THE PRESIDENT today proposed a new deal for sugar workers in order to give them greater participation in the sugar bonanza from the additional sugar quota in the United States.

In another directive the Chief Executive told Secretary Castaño to confer with the striking laborers of the Cebu Portland Cement factory in Naga, Cebu, to effect a peaceful settlement of the strike.

The President took this step after his conference with Jose Zafra, acting general manager and board chairman, and Z. R. Falcon, production manager of the CEPOC, who reported that the strike has been going on for a week because of the refusal of non-unionist laborers to pay the one-peso agency fee being collected by the labor union.

The President told Secretary Castaño that the collection of the agency fee from the non-unionist was illegal and that this was decided in a recent case of the Manila Railroad Company at the Court of Industrial Relation. The President added if the unionist would like to have their case decided, they could do so but that there should be a peaceful settlement first.

The President told Labor Secretary Angel Castaño to make a survey of the sugar industry with the view to increasing the level of wages of workers in the sugar industry.

The President rejected today a proposal to hold a new civil service examination in view of the high mortality rate in the recent general clerical examination as demoralizing to the successful candidates.

The proposal was advanced by SSS Administrator Ramon Gaviola, who informed the President that there will be a big number of vacancies in the government service as a result of the implementation of the new Civil Service Law, known as Republic Act No. 2260.

Gaviola told the President that consideration should also be given to qualify skilled but ineligible government employees because they could not be replaced by civil service eligibles, as most of those who passed in the recent examination were already in the service.

The President said that to give another examination now would be inadvisable, as it might be interpreted to favor certain group of employees. Moreover, the President said that government employees who had been in the service for five consecutive years cannot, under the new Civil Service Law, be separated from the service.

The President began receiving callers today at the Guest House as the Holy Week drew to a close.

In the morning the President who had started on semi-solid diet, completed a nine-hole game at the Mansion House Golf Course with Judge Guillermo Guevarra, Egmidio Marquez, and Drs. Manuel Gaerlan and Valentin Fidelino. The First Lady also started taking golf lessons seriously.

Not a bit tired by the game, the President had breakfast and received Governors Andres Castillo of the Central Bank, Conrado Estrella of Pangasinan, and Jose Zulueta of Iloilo, who went to pay their respects to the Chief Executive. Among other callers were SSS Administrator Ramon Gaviola, Philippine Consul to New York Samson Sabalones, Acting Cebu Portland Cement Corporation Manager Jose Zafra, and Zosimo Falcon, also of the CEPOC.

Later in the day the President went over some state papers brought from Manila by Edilberto Gallares, Malacañang technical assistant.

Very early in the morning and late in the afternoon, the President went into the liturgy of Easter vigil, and inspired by the thought that "Easter is the beginning of Life and Grace for Christianity," the Chief Executive sent an Easter Message to all Christian Filipinos.

President Garcia today extended executive clemency to 477 insular prisoners. The Chief Executive approved the list of prisoners upon recommendation of the Board of Pardons and Parole.

Of the pardoned prisoners, 22 will be granted absolute pardon, 72 conditional, and 283 commutation of sentences.

The names of the pardoned prisoners will be released early next week.

EXECUTIVE ORDERS, PROCLAMATIONS, AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 422

CREATING THE MUNICIPALITY OF DANAO IN THE PROVINCE OF BOHOL

Upon the recommendation of the Provincial Board of Bohol and pursuant to the provisions of section sixty-eight of the Revised Administrative Code, there is hereby created in the province of Bohol a municipality to be known as Danao to consist of the following barrios:

From the municipality of Talibon

1. Danao
2. Remedios
3. Santo Niño
4. Santa Fe
5. San Miguel
6. San Carlos
7. Dagohoy
8. Hebale
9. Cantubod
10. Concepcion

From the municipality of Inabanga

1. San Roque
2. Taming
3. Cabatoan
4. Bongbong
5. Nahud

From the municipality of Carmen

1. Anunciado

with the seat of government at the barrio of Danao.

The municipality of Danao as herein organized shall have the following boundaries:

Beginning at km. 85 on the center line of the Mahayag Danao Road, marked Point 1 on the plan; thence, S. 12° 45′ W. to the top of Canbiyoy Hill, marked point 2, a distance of 0.875 kms.; thence, S. 15° 45′ W. to the top of Pinlanan Hill, marked point 3, a distance of 1.445 kms.; thence, S. 7° 41′ W. to the top of Cang-ayag Hill, marked point 4, a distance of 1.702 kms.; thence, S. 64° 28′ W. to the top of Ca-abario Hill, marked point 5, a distance of 2.408 kms.; thence, S. 17° 40′ W. to the top of Babdoc Mill, marked point 6, a distance of 1.125 kms.; thence, N. 74° 38′ W. to the top of Tinong Toril Hill, marked point 7, a distance of 1.295 kms.; thence, N. 32° 54′ W. to the top of Poong-Taas Hill, marked point 8, a distance of 1.450 kms.; thence, S. 78° 06′ W. to the top of Cawayan Hill, marked point 9, a distance of 2.201 kms.; thence, S. 19° 33′ W. to the top of Can-camay Hill, marked point 10, a distance of 1.442 kms.; thence, N. 46° 45′ W. to the top of Estaca Hill, marked point 11, a distance of 1.556 kms.; thence, N. 52° 01′ W. to the top of Mahagbu Hill, marked point 12, a distance of 1.807 kms.; thence, N. 52° 30′ W. to the top of Suwa Hill, marked point

13, a distance of 1.741 kms.; thence, S. 85° 53′ W. to the top of Cabigon Hill, marked point 14, a distance of 0.650 kms.; thence, N. 36° 23′ W. to the top of Cemetery Hill, marked point 15, a distance of 0.700 kms.; thence, S. 86° 20′ W. to the top of Cansua-ob Hill, marked point 16, a distance of 0.951 kms.; thence, S. 38° 25′ W. to the top of Anunciado Hill, marked point 17, a distance of 1.225 kms.; thence, S. 23° 05′ W. to the Dakit Tree at the foot of Oñgo Hill, marked point 18, a distance of 2.990 kms.; thence, N. 70° 00′ W. to the top of Pali-an Hill, marked point 19, a distance of 1.765 kms.; thence, N. 30° 10′ W. to the top of Ridge shaped like a crocodile, marked point 20, a distance of 2.095 kms.; thence, N. 6° 40′ E. to the concrete monument on the Hill of the old boundary of Carmen and Inabanga, marked point 21, a distance of 1.015 kms.; thence, N. 32° 10′ E. to the junction of Cagamcaman-Cansua-ob and Boho Brooks, marked point 22, a distance of 0.375 kms.; thence, due N. along Cansua-ob and Wahig Rivers, marked point 23, a distance of 4.500 kms.; thence, N. 38° 00′ W. to the top of Icogan Hill, marked point 24, a distance of 2.800 kms.; thence, N. 38° 00′ E. to the top of Biabas Hill, marked point 25, a distance of 1.502 kms.; thence, N. 28° 12′ E. to the top of Nato Hill, marked point 26, a distance of 1.761 kms.; thence, S. 66° 00′ E. to the top of Mt. Cataloan, marked point 27, a distance of 6.050 kms.; thence, S. 83° 17′ E. to the top of Mt. Tawagan, marked point 28, a distance of 1.535 kms.; thence, N. 6° 13′ E. to the top of Sicoy Hill, marked point 29, a distance of 1.326 kms.; thence, N. 10° 36′ E. to the top of Marsid Hill, marked point 30, a distance of 0.324 kms.; thence, N. 12° 34′ E. to the top of Cadoy Hill marked point 31, a distance of 0.286 kms.; thence, N. 18° 54′ E. to the top of Tuba Tuba Hill marked point 32–A, a distance of 1.600 kms.; thence, N. 18° 54′ E. to the top of Tucapon Hill, marked point 32, a distance of 0.700 kms.; thence, S. 88° 11′ E. to the top of Mimoy Hill, marked point 33, a distance of 2.275 kms.; thence, S. 22° 53′ E. to Mutong Talinis, marked point 34, a distance of 2,852 kms.; thence, S. 28° 40′ E. to km. 85 on the center line of the Mahayag-Danao Road, marked point 1, the point of beginning, a distance of 5.657 kms. (This technical description is based on the sketch plan or map of the proposed municipality of Danao, prepared by the Office of the Highway District Engineer of Bohol, on file in this Office, Scale: 1:50,000.

The municipalities of Talibon, Inabanga, and Carmen shall have their respective territories minus the portions thereof which are included in the territory of the municipality of Danao, as delimited above.

The municipality of Danao shall begin to exist upon the appointment and qualification of the mayor, vice-mayor, and a majority of the councilors thereof and upon the certification by the Secretary of Finance that said municipality is financially capable of implementing the provisions of the Minimum Wage Law and providing for all the statutory obligations and ordinary essential services of a regular municipality and that the municipalities of Talibon, Inabanga, and Carmen, after the segregation therefrom of the territory comprised in the municipality of Danao, can still maintain creditably their respective municipal governments, meet all their statutory and contractual obligations, and provide for the essential municipal services.

Done in the City of Manila, this 14th day of March, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 423

CREATING THE MUNICIPALITY OF SAN MIGUEL IN THE PROVINCE OF BOHOL

Pursuant to the provisions of section sixty-eight of the Revised Administrative Code, there is hereby created in the province of Bohol a municipality to be known as San Miguel to consist of the following barrios:

From the municipality of Trinidad

1. Cambangay Sur
2. Cambangay Norte
3. Bayongan
4. Bonbong
5. Bugang
6. Cagawasan
7. Capayas
8. Camanaga
9. Garcia
10. Mahayag
11. Tomoc

From the municipality of Ubay

1. Corazon
2. Magsaysay

with the seat of government at the barrio of Cambangay Sur.

The municipality of San Miguel as herein organized shall have the following boundaries:

"Beginning at a point marked 1 on plan, being S. 5° 50′ E. 5,517 meters from B.L.B.M. No. 1, barrio of Cambangay Sur: thence S. 13° 09′ E., 3,147 meters to point 2; thence N. 62° 50′ W., 3,672 meters to point 3; thence N. 37° 02′ W., 3,195 meters to point 4; thence N. 64° 27′ E., 87 meters to point 5; thence N. 40° 07′ W., 787 meters to point 6; thence N. 86° 55′ W., 348 meters to point 7; thence N. 87° 31′ W., 167 meters to point 8; thence N. 75° 19′ W., 94 meters to point 9; thence N. 48° 55′ W., 82 meters to point 10; thence N. 16° 48′ W., 16 meters to point 11; thence N. 78° 05′ W., 69 meters to point 12; thence N. 32° 35′ W., 33 meters to point 13; thence N. 4° 43′ W., 39 meters to point 14; thence N. 60° 12′ W., 18 meters to point 15; thence S. 46° 25′ W., 35 meters to point 16; thence S. 74° 54′ W., 54 meters to point 17; thence S. 52° 25′ W., 40 meters to point 18; thence S. 81° 55′ W., 63 meters to point 19; thence S. 32° 52′ W., 99 meters to point 20; thence N. 83° 23′ W., 123 meters to point 21; thence S. 45° 39′ W., 57 meters to point 22; thence S. 42° 46′ W., 150 meters to point 23; thence N. 89° 14′ W.,

368 meters to point 24; thence N. 79° 01′ W., 78 meters to point 25; thence N. 20° 40′ E., 8,405 meters to point 26; thence N. 31° 31′ W., 1,300 meters to point 27; thence S. 89° 41′ E., 16,413 meters to point 28; thence S. 7° 12′ E., 6,070 meters to point 29; thence S. 75° 55′ W., 1,853 meters to point 30; thence S. 29° 24′ W., 3,338 meters to point 31; thence S. 68° 30′ W., 3,450 meters to the point of beginning." (As described by Mr. Jose L. Dormentes, private land surveyor, based on the sketch plan of the proposed municipality of San Miguel prepared by said surveyor, on file in this Office, Scale: 1:50,000.)

The municipalities of Trinidad and Ubay shall have their respective territories minus the portions thereof which are included in the territory of the municipality of San Miguel, as delimited above.

The municipality of San Miguel shall begin to exist upon the appointment and qualification of the mayor, vice-mayor, and a majority of the councilors thereof and upon the certification by the Secretary of Finance that said municipality is financially capable of implementing the provisions of the Minimum Wage Law and providing for all the statutory obligations and ordinary essential services of a regular municipality and that the mother municipalities of Trinidad and Ubay, after the segregation therefrom of the territory comprised in the municipality of San Miguel, can still maintain creditably their respective municipal governments, meet all their statutory and contractual obligations, and provide for the essential municipal services.

Done in the City of Manila, this 14th day of March, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 424

EXTENDING THE JURISDICTION OF THE JUSTICE OF THE PEACE COURT OF OLONGAPO, ZAMBALES, OVER THAT PORTION OF THE UNITED STATES NAVAL BASE RESERVATION, SUBIC

BAY AREA, FALLING WITHIN THE PROVINCE OF ZAMBALES

WHEREAS, under Executive Order No. 366, dated December 7, 1959, the Community of Olongapo was created as an independent municipality known as the Municipality of Olongapo and segregated from the U.S. Naval Base at Subic Bay, Province of Zambales;

WHEREAS, in view of the creation of the Municipality of Olongapo, the jurisdiction of the Justice of the Peace Court of Olongapo over cases from the U.S. Naval Base area ceased to exist, the court's jurisdiction being now confined to the territorial limits of said municipality; and

WHEREAS, the filing of such cases with the Justice of the Peace of Olongapo is more conducive to the speedy administration of justice and convenient to the parties in view of its proximity and accessibility to the base;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me under sections 69 and 69 of the Judiciary Act of 1948, and upon the recommendation of the Secretary of Justice, do hereby extend the jurisdiction of the Justice of the Peace Court of Olongapo over that portion of the U.S. Naval Base Reservation, Subic Bay area, falling within the Province of Zambales.

This Order shall take effect immediately.

Done in the City of Manila, this 14th day of March, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 425

CREATING THE MUNICIPALITY OF LUGAIT IN THE PROVINCE OF MISAMIS ORIENTAL

Upon the recommendation of the Provincial Board of Misamis Oriental and pursuant to the provisions of sec-

tion sixty-eight of the Revised Administrative Code, the barrios of Lugait, Biga, and Aya-Aya, together with their respective sitios, all of the municipality of Manticao, province of Misamis Oriental, are hereby segregated from said municipality and organized into an independent municipality in said province, to be known as the municipality of Lugait with the seat of government at the barrio of Lugait.

The municipality of Lugait as herein organized shall have the following boundaries:

Beginning at a point marked 1 on the attached sketch plan, thence S. 68° 00′ E., 1,000.00 meters to point 2; thence S. 68° 00′ E., 1,000.00 meters to point 3; thence S. 68° 00′ E., 1,000.00 meters to point 8; thence S. 20° 00′ E., 8,000.00 meters to point 9; thence S. 38° 00′ E., 1,000.00 meters to point 6; thence S. 63° 00′ E., 1,000.00 meters to point 7; thence S. 63° 00′ E., 1,000.00 meters to point 8; thence S. 20° 00′ E., 8,020.00 meters to point 9; thence S. 20° 00′ E., 800.00 meters to point 10; thence following in a westerly direction with a distance of 7,400.00 meters to point 11; thence following the boundary of the marine waters which this municipality shall have pursuant to section 2321 of the Revised Administrative Code to point marked 1, the point of beginning. (Based on the technical description furnished by the Bureau of Lands of the sketch plan or map showing the boundaries of the municipality of Manticao and the proposed municipality of Lugait, prepared and submitted to this Office by the Office of the Highway District Engineer of Misamis Oriental, Scale: 1, 20,000)

The municipality of Manticao shall have the same territory minus that comprised in the municipality of Lugait, as delimited above.

The municipality of Lugait shall begin to exist upon the appointment and qualification of the mayor, vice-mayor, and a majority of the councilors thereof and upon the certification by the Secretary of Finance that said municipality is financially capable of implementing the provisions of the Minimum Wage Law and providing for all the statutory obligations and ordinary essential services of a regular municipality and that the mother municipality of Manticao, after the segregation therefrom of the territory comprised in the municipality of Lugait, can still maintain creditably its municipal government, meet all its statutory and contractual obligations and provide for the essential municipal services.

Done in the city of Manila, this 16th day of March, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 426

FIXING OFFICE HOURS DURING THE HOT SEASON

Pursuant to the provisions of section 564 of the Revised Administrative Code, as amended by Republic Act No. 1880, the office hours from Monday to Friday of all departments, bureaus, offices, agencies, and instrumentalities of the government, including the provincial, city, and municipal governments and all corporations owned or controlled by the government, during the period from April 3 to June 15, 1961, both dates inclusive, shall be from seven-thirty o'clock in the morning to twelve-thirty o'clock in the afternoon. The provisions of this Order shall not apply to the offices in the City of Baguio, whether national, provincial, or municipal.

This Order shall not oblige the Head of any department, bureau, or office to reduce as herein provided the office hours in his department, bureau, or office, but leaves the same to his discretion subject to the requirements of the service and provided that the usual volume of work is not diminished by the reduction of office hours.

Done in the City of Manila, this 18th day of March, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 427

CREATING THE MUNICIPALITY OF ALCANTARA IN THE PROVINCE OF ROMBLON

Pursuant to the provisions of section sixty-eight of the Revised Administrative Code, the barrios of Alcantara, San Isidro, Comoed-om, Tugdan, Calagonsao, Bonlao, Ma-

dalag, and Camili, together with their respective sitios, all of the municipality of Looc, province of Romblon, are hereby segregated from said municipality and organized into an independent municipality in said province, to be known as the municipality of Alcantara with the seat of government at the barrio of Alcantara.

The municipality of Alcantara as herein organized shall have the following boundaries:

Beginning at a point marked 1 on the sketch plan, which is at the shore of Romblon Pass marked Hor. Grid 50; thence along the line following a northwesterly direction with a distance of about 3,700 meters to Guinhayaan Junction marked point 2; thence along the line following a northeasterly direction with a distance of about 13,000 meters to point marked 3 along the Odioñgan–Looc boundary line and marked Hor. Grid 65.8; thence along the line following a northeasterly direction along the Odioñgan–Looc boundary line with a distance of about 2,500 meters to point marked 4; thence along the line following a southeasterly direction with a distance of about 5,000 meters along the San Agustin–Looc boundary line to point marked 5 near Naabang Point which is at the shore of Romblon Pass; thence following the boundary of the marine waters which this municipality shall have pursuant to the provision of section 2321 of the Revised Administrative Code to point marked 1, the point of beginning. (Based on the technical description furnished by the Bureau of Lands on the sketch plan or map of the municipality of Looc showing the boundaries of the proposed municipality of Alcantara, prepared by the Office of the Highway District Engineer of Romblon, on file in this Office, Scale: 1:50,000).

The municipality of Looc shall have its present territory minus the portions thereof included in the municipality of Alcantara, as delimited above.

The municipality of Alcantara shall begin to exist upon the appointment and qualification of the mayor, vice-mayor, and a majority of the councilors thereof and upon the certification by the Secretary of Finance that said municipality is financially capable of implementing the provisions of the Minimum Wage Law and providing for all the statutory obligations and ordinary essential services of a regular municipality and that the mother municipality of Looc, after the segregation therefrom of the territory comprised in the municipality of Alcantara, can still maintain creditably its municipal government, meet all its statutory and contractual obligations, and provide for the essential municipal services.

Done in the City of Manila, this 21st day of March, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 740

DECLARING SATURDAY, MARCH 18, 1961, AS A SPECIAL PUBLIC HOLIDAY IN THE PROVINCES OF AGUSAN, BUKIDNON, COTABATO, DAVAO, LANAO DEL NORTE, LANAO DEL SUR, PALAWAN, SULU, SURIGAO, ZAMBOANGA DEL NORTE, ZAMBOANGA DEL SUR AND IN THE CITIES OF BASILAN, BUTUAN, COTABATO, DAVAO, ILIGAN, MARAWI, AND ZAMBOANGA

In connection with the Muslim National Feast of Eid-ul-Fitr, I, Carlos P. Garcia, President of the Philippines, pursuant to the authority vested in me by section 30 of Revised Administrative Code, do hereby declare Saturday, March 18, 1961, as a special public holiday for Muslim population only, in the provinces of Agusan, Bukidnon, Cotabato, Davao, Lanao del Norte, Lanao del Sur, Palawan, Sulu, Surigao, Zamboanga del Norte, Zamboanga del Sur, and in the cities of Basilan, Butuan, Cotabato, Davao, Iligan, Marawi, and Zamboanga.

Muslim officials and employees of the government, both national and local, performing their duties and functions outside of the provinces and cities above stated, shall be exempted from duty during this feast day which, for purposes of this proclamation, shall be considered as a special public holiday for said officials and employees in their respective stations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 17th day of March, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 741

DECLARING APRIL 1, 1961, AS A SPECIAL PUBLIC HOLIDAY

WHEREAS, the 30th day (Holy Thursday) and the 31st day (Good Friday) of March, nineteen hundred and sixty-one, being public holidays, the 1st day (Saturday) of April, nineteen hundred and sixty-one, may be declared a special public holiday without any prejudice to the public interest;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the authority vested in me by section 30 of the Revised Administrative Code, and there being sufficient reasons therefor, do hereby declare Saturday, April 1, 1961, as a special public holiday.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 17th day of March, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

REPUBLIC ACTS

Enacted during the Fourth Congress of the Philippines
Third Session

H. No. 4438

[REPUBLIC ACT No. 2906]

AN ACT TO AMEND ITEM (7), TITLE A, GROUP 3–*f*, BATANES, PAGE 30, SECTION ONE OF REPUBLIC ACT NUMBERED TWELVE HUNDRED.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Item (7), Title A, Group 3–*f*, Batanes, page 30, Section one of Republic Act Numbered Twelve hundred, is hereby amended to read as follows:

"(7) Basco Elementary School buildings,
Repair and/or improvement ..... ₱2,500.00"

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4456

[REPUBLIC ACT No. 2907]

AN ACT AMENDING A CERTAIN ITEM IN REPUBLIC ACT NUMBERED TWENTY HUNDRED NINETY-THREE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Item (*c*) on page 260, subparagraph 43, paragraph (*f*), Title M, under the Province of Pangasinan, Group I, Section one of Republic Act Numbered Twenty hundred ninety-three is amended to read as follows:

"(*c*) Awag barrio road,
Anda—
Construction and/or improvement ..... ₱5,000.00."

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4457

[REPUBLIC ACT No. 2908]

AN ACT AMENDING ITEM (*ea*) ON PAGE 294, SUBPARAGRAPH 44, PARAGRAPH (*a*), TITLE B, SECTION ONE OF REPUBLIC ACT NUMBERED TWENTY-THREE HUNDRED AND ONE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Item (*ea*) on page 294, subparagraph 44, paragraph (*a*), Title B, Section one of Republic Act Numbered Twenty-three hundred and one is amended to read as follows:

"(*ea*) Municipal streets and barrio roads particularly Estanza–Guesang–Domalandan and Malawa barrio roads and Palaris and East and West Padilla streets, Lingayen.... 35,000.00"

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4477

[REPUBLIC ACT NO. 2909]

AN ACT REAPPROPRIATING CERTAIN SUMS UNDER REPUBLIC ACT NUMBERED TWENTY-THREE HUNDRED ONE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Item 14 (*b*), page 530 of Republic Act Numbered Twenty-three hundred and one, is amended to read as follows:

"14. (*b*) Barrio school building, Sitio Saay, Barrio Can-asujan, Carcar—
Construction of one room ..... ₱4,000.00."

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4478

[REPUBLIC ACT NO. 2910]

AN ACT REAPPROPRIATING CERTAIN SUMS UNDER REPUBLIC ACT NUMBERED TWENTY-THREE HUNDRED ONE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sums appropriated under item (*c*), page 252 of Republic Act Numbered Twenty-three hundred and one, to wit:

"(*c*) Sangit–Cabatbatan Road, San Fernando ..... ₱15,000.00;"

and item (*r*), page 252 of the same Act, to wit:

"(*r*) Magtalisay–Palingpaling–Basak Road, San Fernando ..... ₱10,000.00;"

totalling in the amount of twenty-five thousand pesos, are hereby reappropriated for the construction of beach road in Talisay Beach, Talisay.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4489

[REPUBLIC ACT NO. 2911]

AN ACT CREATING THE BARRIO OF BAGONG POOK IN THE MUNICIPALITY OF PILA, PROVINCE OF LAGUNA.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitio of Bagong Pook in the Municipality of Pila, Province of Laguna, is converted into a barrio of said municipality to be known as the barrio of Bagong Pook.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4492

[REPUBLIC ACT NO. 2912]

AN ACT TO CREATE A BOARD OF TECHNICAL SURVEYS AND MAPS, DEFINING ITS FUNCTIONS AND APPROPRIATING FUNDS THEREFOR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Title.*—This Act shall be known as the Surveying and Mapping Act of 1960.

SEC. 2. *Policy.*—It is hereby declared as the policy of the State: (1) That there shall be independence from the United States of America in the making of economic maps, topographical maps, special maps, aeronautical charts and/or maps of the Philippines and functions of the government in this field up-dated so that the necessary machinery be established; (2) that in order to promote and/or improve efficiency among the different mapping and surveying agencies of the government, their activities must be systematized and coordinated and that research be instituted; (3) that economic maps, large scale topographical maps which conform with modern standards, special geological maps needed for economic development, and aeronautical charts be produced in this country and made available for its economic development; (4) that this Act shall not be construed to prevent the logical expansion of offices now engaged in mapping and surveying but rather to coordinate such expansion for the sake of economy and efficiency and that no map or chart now produced or contemplated to be produced by any authorized surveying and/or mapping agency of the Government shall be duplicated as a result of this Act.

SEC. 3. *Board of Technical Surveys and Maps; Powers, Functions and Duties.*—There is hereby created a Board of Technical Surveys and Maps hereinafter called the Board, with the following functions, powers and duties:

(1) To promulgate and adopt a set of national mapping and surveying standards which shall include, but shall not be limited to symbols, surveying requirement and specifications, and with due considerations to those already adopted by international organizations of which the Philippines is a member;

(2) To adopt and prescribe national survey data which shall include but shall not be limited to horizontal and vertical surveying controls and gravity;

(3) To coordinate the activities of such surveying and mapping agencies in the government as well as semi-govern-

ment corporations which have activities in this field and which may be designated by the Board;

(4) To coordinate the budgetary requirements of those agencies designated in accordance with the previous section in so far as the objectives of the Board are affected;

(5) To develop and encourage free private enterprise in the field of surveying and mapping;

(6) To promote and encourage voluntary coordination and cooperation among the designated government agencies so as to promote the usefulness of every technical survey data and/or map obtained and produced, so that duplication of work shall be reduced to a minimum;

(7) To encourage, assist, plan, coordinate and direct within its powers and facilities the early publication for public use economic maps, large scale topographical and special geological maps needed for economic development, aeronautical charts, technical and scientific date;

(8) To promote and encourage research and development among the designated agencies, not only for the improvement of production methods but also for the utilization of local instruments, machines and materials;

(9) To initiate and formulate measures designed to promote the early attainment of the objectives of this Act;

(10) To obtain the necessary data for the compilation, reproduction and publication of any of the maps and charts specified in this Act, unless such function is vested under existing laws to any other government agency;

(11) To have all the duties, powers, functions and prerogatives of the Board of Directors which shall function as such, unless otherwise provided for in this Act; to promulgate such rules and regulations as may be necessary for the conduct and exercise of its functions, duties and powers under this Act: *Provided,* That the concurrence of at least six members is required for the approval of any resolution;

(12) To submit to the President of the Philippines and to both Houses of Congress, not later than the opening of the regular session each year, an annual report on the status of surveying and mapping efforts of the government; and

(13) To do such other things and take such action as may be directly or indirectly incidental or conducive to the attainment of the objectives of this Act.

SEC. 4. *Composition of the Board.*—The Board shall be composed of a chairman; a vice-chairman who shall concurrently be the Executive Director of the Board; and the following as members: the Budget Commissioner, the Undersecretary of Public Works and Communications whose appointment is to be approved by the President upon the recommendation of the Secretary of Public Works and Communications, the Undersecretary of National Defense, the Undersecretary of Natural Resources of the Department of Agriculture and Natural Resources, the Director of National Planning of the National Economic Council, the Manager of National Waterworks and Sewerage Authority, and one member each, representing the surveying or geodetic, photogrammetric and civil engineering professions who shall be appointed by the President from among those who may be recommended by representative groups or societies, subject to the confirmation of the Commission on Appointments and who shall hold office for a term of three years.

SEC. 5. *Chairman of the Board.*—The Chairman of the Board shall be the Secretary of National Defense. He shall receive a *per diem* of fifty pesos per session but not to exceed two hundred pesos a month.

SEC. 6. *Vice-Chairman and Executive Director.*—The Vice-Chairman and Executive Director shall be appointed by the President subject to the confirmation of the Commission on Appointments. He shall be a citizen of the Philippines with proven executive ability in the field of surveying and mapping and shall have seven years experience as a senior executive with sufficient training and background in the management of mapping. He shall be familiar with the production of maps and charts specified in this Act. He shall receive an annual compensation of fifteen thousand pesos *per annum* and transportation allowance of one hundred pesos per month.

SEC. 7. *Per diem of members of the Board.*—The members of the Board, except the vice-chairman who shall serve as *ex officio* member, shall receive a *per diem* of forty pesos each per session but not to exceed one hundred sixty pesos each month.

SEC. 8. *Divisions in the Board.*—The Board shall have the following divisions: Administrative Division, Division of Topographical Maps, Division of Special Maps and Aeronautical Charts, Division of Research and Development and such other division as the Board may deem necessary to create.

SEC. 9. *Duties, Powers and Functions of the Chairman.*—The Chairman may, subject to the approval of the Board enter into contracts or otherwise make arrangements for the compilation, reproduction and distribution, including research and development of the following:

(*a*) Large scale topographical maps; (*b*) special geological maps needed for economic development; (*c*) aeronautical charts; and (*d*) economic maps and other scientific data and information that are within the scope and objectives as defined in this Act.

In the implementation of such contracts or arrangements, the Chairman, subject to the approval of the Board, may make partial or advance payments and make available such equipment and facilities of the Board as he may deem necessary.

The Chairman shall, with the approval of the Board and upon the recommendation of the Vice-Chairman and Executive Director, appoint such technical and administrative personnel as may be necessary to carry out the functions of the Board.

The Chairman may, subject to the approval of the Board, delegate some of his powers and authority to the Vice-Chairman and Executive Director who shall hold office on a full time capacity.

SEC. 10. *Duties, Powers and Functions of the Vice-Chairman and Executive Director.*—The Vice-Chairman and Executive Director shall exercise immediate control and supervision over the divisions and offices of the Board and such other duties, powers and authority as may be delegated by the chairman and approved by the Board.

SEC. 11. *Research and Development.*—The Board shall, in coordination with the National Science Development Board and similar agencies of the government, strive to

promote research and development to improve efficiency in surveying and map-making. The Chairman is authorized to conduct development work for the improvement of surveying and cartographic methods, instruments and equipment.

SEC. 12. *Gifts and Bequests.*—The Board is authorized to accept and utilize gifts or bequests of money and other real or personal property for the purpose of aiding or facilitating the work of the Board and such gifts and bequests and the income therefrom shall be exempt from taxes.

SEC. 13. *Transitory Provisions.*—The President is authorized, prior to the approval by Congress of a regular budget for the normal operation of the Board:

(1) To create a revolving fund by transferring funds from the income of the Manila International Airport, for the printing of aeronautical charts; and

(2) To create another revolving fund for the printing of other maps specified in this Act, which may be secured from reparations fund and from any existing and/or expected ICA–NEC assistance fund or from similar revolving funds at present from in the Treasury.

SEC. 14. *Appropriation.*—There is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

SEC. 15. *Funds.*—Funds appropriated for the Board shall, if obligated by contracts during the fiscal year for which appropriated, remain available for expenditures for four years following the expiration of the fiscal year for which appropriated or for the duration of the contract under which it is obligated.

SEC. 16. *Separability Clause.*—If any provision of this Act should be held invalid, the other provisions shall not be affected thereby.

SEC. 17. *Repealing Clause.*—All Acts, executive orders, administrative orders, rules and regulations or parts thereof, which are inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 18. *Effectivity.*—This Act shall take effect after thirty days from its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4509

[REPUBLIC ACT NO. 2913]

AN ACT CREATING THE BARRIOS OF REMEDIOS I AND REMEDIOS II IN THE MUNICIPALITY OF MAUBAN, PROVINCE OF QUEZON.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitios of Bundok, Pantay and Labak in the barrio of Remedios, Municipality of Mauban, Province of Quezon, are hereby separated from the said barrio and are constituted into a new distinct and independent barrio to be known as the barrio of Remedios I.

SEC. 2. The remaining sitios of Aluyanin, Bagacay and Bulakan of the same barrio are hereby constituted into a

new distinct and independent barrio to be known as the barrio of Remedios II, making Mabanga River as the boundary between the two new barrios herein constituted.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4532

[REPUBLIC ACT No. 2914]

AN ACT TRANSFERRING THE PROVINCIAL CAPITAL OF THE PROVINCE OF COTABATO TO THE MUNICIPALITY OF SULTAN SA BARONGIS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The Municipality of Sultan sa Barongis, Province of Cotabato, shall be the capital of said province: *Provided,* That, until the necessary buildings to be used for housing the different offices of the Provincial Government of Cotabato shall have been constructed, the City of Cotabato shall continue to be the capital of the Province of Cotabato.

SEC. 2. The Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4558

[REPUBLIC ACT No. 2915]

AN ACT TO AMEND A CERTAIN ITEM OF REPUBLIC ACT NUMBERED SIXTEEN HUNDRED THIRTEEN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Item (31) on page 148 of Republic Act Numbered Sixteen hundred thirteen is amended to read as follows:

"(31) Cantabaco Elementary School, Naga,
Plan No. 4, modified—
Construction of one additional
room ..... ₱6,000.00."

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4566

[REPUBLIC ACT No. 2916]

AN ACT REAPPROPRIATING CERTAIN SUMS APPROPRIATED IN REPUBLIC ACTS NUMBERED SIXTEEN HUNDRED THIRTEEN AND NINETEEN HUNDRED.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sums appropriated in Republic Act Numbered Sixteen hundred thirteen under:

Item (*b*), group II, subparagraph (27) for the Province of Leyte, paragraph *f*, Section two, for Baybay Central Market building, Construction ..... ₱50,000.00;

Item 58 for the Province of Leyte, page 167, paragraph *g*, Section two, for Central Market building, Baybay 6,000.00,

and the sum appropriated in Republic Act Numbered Nineteen hundred under:

Item (*f*), page 309, group II, subparagraph (28) for the Province of Leyte, paragraph *f*, Section two, for Baybay Super Market (Washington corner of Luna Streets) Additional appropriation ₱30,000.00,

totalling eighty-six thousand pesos, are hereby reappropriated for the construction, repair and improvement of the Baybay Municipal Hall in the Municipality of Baybay, Province of Leyte.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4624

[REPUBLIC ACT No. 2917]

AN ACT TO CONVERT THE SITIO OF MALUSAK IN THE MUNICIPALITY OF MOGPOG, PROVINCE OF MARINDUQUE, INTO A BARRIO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitio of Malusak in the Municipality of Mogpog, Province of Marinduque, is converted into a barrio.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4720

[REPUBLIC ACT No. 2918]

AN ACT TRANSFERRING THE SEAT OF GOVERNMENT OF THE MUNICIPALITY OF BURGOS, PROVINCE OF ILOCOS SUR, TO THE BARRIO OF LUNA.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The seat of government of the Municipality of Burgos, Province of Ilocos Sur, is transferred from its present site to the barrio of Luna.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4722

[REPUBLIC ACT No. 2919]

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A FRESH-WATER EXPERIMENTAL DEMON-

STRATION FISH FARM NURSERY AT SAN MATEO, PROVINCE OF ISABELA, AND TO AUTHORIZE THE APPROPRIATION OF FUNDS THEREFOR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There shall be established and maintained, under the supervision of the Director of Fisheries, a fresh-water experimental demonstration fish farm nursery at San Mateo in the Province of Isabela.

SEC. 2. The sum of fifty thousand pesos is hereby authorized to be appropriated, out of any funds in the National Treasury not otherwise appropriated, to carry into effect the purpose of this Act during the fiscal year ending June thirtieth, nineteen hundred and sixty-one. Thereafter, the necessary amount for the purpose shall be included in the General Appropriations Act of each year.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4743

[REPUBLIC ACT No. 2920]

AN ACT AUTHORIZING THE APPROPRIATION OF ONE HUNDRED FIFTY THOUSAND PESOS FOR THE OPERATION AND MAINTENANCE OF THE DANAO NATIONAL HOSPITAL AND THE BOGO NATIONAL HOSPITAL, BOTH IN THE PROVINCE OF CEBU.

Be it enacted by the Senate and House of Representative of the Philippines in Congress assembled:

SECTION 1. The sum of one hundred fifty thousand pesos is hereby authorized to be appropriated, out of any funds in the National Treasury not otherwise appropriated, for the operation and maintenance of the Danao National Hospital in the Municipality of Danao, Province of Cebu, and the Bogo National Hospital in the Municipality of Bogo, same province, during the fiscal year nineteen hundred sixty-one. Thereafter, such sums as may be needed for tht said purpose shall be included in the annual General Appropriations Act.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive Approval, June 19, 1960.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Justice

COURT OF TAX APPEALS

ADMINISTRATIVE ORDER No. 1

March 3, 1961

AUTHORIZING PRESIDING JUDGE MARIANO NABLE TO HOLD COURT AT CEBU CITY, ILOILO CITY AND BACOLOD CITY FOR THE PURPOSE OF RECEIVING EVIDENCE IN CERTAIN CASES AND SUCH OTHER CASES AS MAY BE ASSIGNED TO HIM.

In the interest of the administration of justice and pursuant to the Resolutions of this Court dated February 28, 1961, March 1 and 2, 1961 in the following cases:

1. C.T.A. Case No. 137, Philippine Portland Cement Co., Inc. *vs.* The Acting Commissioner of Customs;
2. C.T.A. Case No. 511, Jose Tayengco *vs.* Collector of Internal Revenue;
3. C.T.A. Case No. 521, Leonor de la Rama et al. *vs.* The Commissioner of Internal Revenue;
4. C.T.A. Case No. 530, Visayan Electric Co., S.A. *vs.* The Collector of Internal Revenue;
5. C.T.A. Case No. 626, Philippine Packing Corporation *vs.* Commissioner of Internal Revenue;
6. C.T.A. Case No. 671, Asturias Sugar Central, Inc., *vs.* Commissioner of Internal Revenue;
7. C.T.A. Case No. 719, Visayan Cebu Terminal Co., Inc. *vs.* Bureau of Internal Revenue;
8. C. T. A. Case No. 751, Basilan Lumber Company *vs.* Commissioner of Internal Revenue;
9. C. T. A. Case No. 777, Lilia Yusay Gonzales, Judicial co-administratrix of the Estate of the late Matias Yusay *vs.* Commissioner of Internal Revenue;
10. C.T.A. Case No. 836, C. N. Hodges *vs.* Board of Assessment Appeals of Iloilo;
11. C.T.A Case No. 851, Municipal Board, in representation of the City of Cebu *vs.* Board of Assessment Appeals and Agustin Jereza, for and in behalf of the University of Southern Philippines, Foundation;
12. C.T.A. Case No. 941, The Southern Industrial Products, Inc. *vs.* The Commissioner of Internal Revenue;
13. C. T. A. Case No. 948, Philippine Producers' Coop. Marketing Ass'n., Inc. (Philprocom) *vs.* Hon. Commissioner of Customs;
14. C.T.A. Case No. 961, Visayan Cebu Terminal Co., Inc. *vs.* Commissioner of Internal Revenue;
15. C.T.A. Case No. 965, Butuan Sawmill, Inc. *vs.* Commissioner of Internal Revenue;
16. C.T.A. Case No. 969, Rev. Fr. Casimiro Lladoc *vs.* The Collector of Internal Revenue or his successor in office;
17. C.T.A Case No. 974, Visayan Electric Company *vs.* Commissioner of Internal Revenue;
18. C.T.A. Case No. 986, Basilan Sawmill, Inc. *vs.* Commissioner of Internal Revenue;
19. C.T.A. Case No. 993, Butuan Sawmill, Inc. *vs.* Commissioner of Internal Revenue;
20. C.T.A. Case No. 996, Rafael Suarez, Maria S. Magallanes, Jesus Suarez, Jose F. Suarez, The Estate of the late Felicidad Vda. de Suerez *vs.* Melecio R. Domingo, in his capacity as Commissioner of Internal Revenue;

Honorable Mariano Nable, Presiding Judge of this Court, is hereby authorized to hold court at Cebu City, Iloilo City and Bacolod City beginning the latter part of March, 1961 or as soon thereafter as practicable, for the purpose of receiving the evidence in the above-mentioned cases and such other cases as may be assigned to him during the months of March, April and May, 1961, and to submit to the Court his report, as required by law.

MARIANO NABLE
Presiding Judge

ADMINISTRATIVE ORDER No. 2

March 6, 1961

INSTRUCTING CLERK OF COURT AMANTE FILLER AND MIGUEL R. NAVARRO,

CHIEF OF THE LEGAL AND TECHNICAL STAFF, TO ASSIST PRESIDING JUDGE MARIANO NABLE.

In the interest of the administration of justice and pursuant to the provisions of sections 4 and 6 of Republic Act No. 1125, Mr. Amante Filler and Mr. Miguel R. Navarro, Clerk of Court and Chief of the Legal and Technical Staff of this Court, respectively, are hereby instructed to assist Presiding Judge Mariano Nable in the trial of cases assigned to him in Cebu City, Iloilo City and Bacolod City, effective the latter part of March, 1961. or as soon thereafter as practicable. In the performance of such duties as may from time to time be assigned to them thereat, they will maintain close liason between the division of this Court holding sessions in Cebu, Iloilo and Bacolod and the divisions holding court in Manila, proceeding to these places whenever the interest of public service so requires.

It is understood that the instructions contained in the Memorandum of this Court dated March 3, 1961, will be strictly complied with.

MARIANO NABLE
Presiding Judge

ADMINISTRATIVE ORDER NO. 3

March 3, 1961

INSTRUCTING ATTORNEYS CIRILO G. MONTEJO AND MARIA D. VASQUEZ TO ASSIST PRESIDING JUDGE MARIANO NABLE.

In the interest of the administration of justice and pursuant to the provisions of sections 4 and 6 of Republic Act No. 1125, Mr. Cirilo G. Montejo and Mrs. Maria D. Vasquez of the Legal and Technical Staff of this Court are hereby designated to assist Presiding Judge Mariano Nable in the trial of cases assigned to him in Iloilo City and Bacolod City effective April 15, 1961 or as soon thereafter as practicable, and to continue until further orders or such time as Presiding Judge Mariano Nable returns to Manila. In the performance of their duties, they will act as Special Deputy Clerks of Court. It is understood that the instructions contained in the Memorandum of this Court dated March 3, 1961 will be strictly complied with.

MARIANO NABLE
Presiding Judge

ADMINISTRATIVE ORDER NO. 4

March 15, 1961

AUTHORIZING ASSOCIATE JUDGE AUGUSTO M. LUCIANO TO EXERCISE EXECUTIVE SUPERVISION OVER THE COURT OF TAX APPEALS.

In the interest of public service, and while the Presiding Judge is holding court outside the City of Manila during the latter part of March, April and May, 1961, Associate Judge Augusto M. Luciano is hereby authorized to exercise executive supervision over the Court of Tax Appeals, as well as to sign for the Presiding Judge payrolls, vouchers, letters, communications and other papers in connection with its operations and administration.

MARIANO NABLE
Presiding Judge

Department of Commerce and Industry

PHILIPPINE NATIONAL COOPERATIVE BANK

ADMINISTRATIVE ORDER NO. 5
Series of 1960

November 23, 1960

COMPOSITION OF THE BOARD OF DIRECTORS OF THE PHILIPPINE NATIONAL COOPERATIVE BANK.

Pursuant to the authority vested in me by the provisions of Section 119 of Republic Act No. 2023, and in order to effect economy in the operation of the Philippine National Cooperative Bank and for purposes of expediency in the formulation of its policies, the composition of its Board of Directors is reduced as follows:

Eight (8) Directors representing cooperatives (Class "A" members)

Two (2) Directors representing preferred shareholders (Class "B" members)

Five (5) Ex-officio Directors who shall be the President, Manager, Secretary and Treasurer of the Philippine National Cooperative Bank and the Administrator of the Cooperatives Administration Office.

Provided, however, that in the general assembly to be held in February, 1961, there shall be elected only two (2) Directors representing cooperatives and two (2) Directors representing preferred shareholders whose term shall be for one (1) year. The general assembly in 1962 shall elect eight (8) Direc-

tors representing cooperatives and two (2) Directors representing preferred shareholders whose term shall be for one (1) year. Provided, further, that upon enactment by the present Congress of an amendment to Section 119 of Republic Act No. 2023, reducing the number of ex-officio Directors from five (5) to two (2), the three (3) candidates for Directors representing cooperatives receiving the next higher number of votes in the general assembly of February, 1961, shall ipso facto replace the three (3) ex-officio Directors; and thereafter eleven (11) Directors representing cooperatives and two (2) Directors representing preferred shareholders shall be elected annually.

This Administrative Order shall take effect immediately.

MANUEL LIM
Secretary

CENTRAL BANK OF THE PHILIPPINES

CIRCULAR No. 122

March 15, 1961

Pursuant to the provisions of Republic Act No. 2609, the Monetary Board, with the approval of the President of the Philippines, hereby reduces the margin over the banks' selling rates from twenty (20) to fifteen (15) per cent.

This new margin shall take effect as of today.

ANDRES V. CASTILLO
Acting Governor

Certified true copy:

Domingo B. Hernandez
Officer-In-Charge
Records Division, D P A S

HISTORICAL PAPERS AND DOCUMENTS

PRESIDENT GARCIA'S SPEECH BEFORE THE BUSINESS WRITERS ASSOCIATION OF THE PHILIPPINES (BWAP) ON MARCH 22, 1961, AT THE MANILA HOTEL

MY FELLOW COUNTRYMEN:

MORE than thirty years ago, a man who became the poet laureate of this MIDDLE EAST COUNTRY, wrote these words:

> Pity the nation that wears a cloth it does not weave, eats a bread it does not harvest, and drinks a wine that flows not from its own winepress . . . .

Thus with incisive insight this (Kahlil Gibran of Lebanon) poet summed up a verity of life full of economic as well as philosophical implications. Perhaps he was speaking of his own country and his own time, but he could very well have spoken of all countries which suffer the basic weakness of dependency upon others for their existence.

The problems of dependency and deficiency have had long historical roots in the underdeveloped countries of Asia and Africa. Many of them newly emergent from the shadow of foreign dominance, found themselves thrust into the backwash of world competition left to their meager technological and financial resources, to eddy far behind the industrial and advanced nations. The rising expectations of their peoples soon pressed to the limits of these resources, and extraordinary measures had to be taken to push out of the restrictive confines of underdevelopment and poverty into the broad new frontiers of self-sustaining economic growth more worthy of free nations. Economic development then became the prime aspiration and common consuming effort of these countries, including our own, with self-sufficiency as the immediate good, and prosperity, the ultimate end.

We have met with remarkable success in our effort. I need not elaborate on statistical magnitudes in this regard; the record is open for all to see. From an economy prostrated by war, with production and trade facilities largely in ashes, we have witnessed the transition to an economy self-sufficient in the basic needs of its people and able to trade with the world from a position of growing strength.

We have seen our economy stoutly weather off at least two serious financial crises which could very easily have wiped out the gains of any development program through ruinous inflation. We have watched the growing network of social-overhead" or "impulse" facilities, such as transport, communications, and power which are necessary pre-conditions to the establishment and operation of other facilities. We

have witnessed the intensification of production activity in both agricultural and industrial lines, with the mushrooming of factories and plants in commercial centers, and their increasing dispersal to the rural regions. Last but not least, we have been aware of the growing experience and maturity of government and private business in the task of economy-building, the all-important intangibles vital to the sustenance of progress.

And now, we find the country at the threshold of a return to free enterprise, with the government preparing to relinquish the controls it has exercised over the past decade as an instrument of economic development. This in itself is eloquent testimony to the stage of progress the Philippines has achieved, that the government should now get ready to entrust the responsibility for allocation of resources to the market forces, and the continuance of development to the businessmen and industrialists of the private sector.

We have reached the penultimate stage before the threshold is crossed and full decontrol becomes a fact. The widening of the free market area last March, second to embrace about 75 per cent of all foreign exchange transactions, brings us one step closer to a unitary exchange rate which shall be responsive to the exigencies of the market. However, during this stage there are several things that must be accomplished if the threshold is to be safely spanned and the return to free enterprise completed without the dislocation of the economy and the disruption of development. Of late, you have been well apprised of the duties and responsibilities of the private sector in effecting a successful transition. Let me now discuss then the other side of the coin, the measures that have been taken or are yet to be taken in the public sector before the final stage of the decontrol program can be terminated.

The imminence of full decontrol will necessarily cause the government to shift emphasis from direct regulation to more subtle instruments of supervision. Henceforth, the channelling of economic activities into desired lines will have to be accomplished by inducement and moral suasion rather than by the force of edict. Policies of attraction through tax incentives, tariff protection, or even subsidies for highly desirable projects will play larger roles in encouraging the flow of resources to strategic areas of economic endeavor. Otherwise, the government will seek to minimize its intervention in the course of ordinary business.

The public sector's fiscal operations will be a particularly sensitive factor during this transitional decontrol period and thereafter. Greater caution will be necessary because any imprudence in fiscal policies would immediately have an unsettling impact on the free peso-dollar parity. An excess of expenditures over revenues would trigger an inflationary

situation at a time when the economy is particularly vulnerable. Expansion in money supply at a rate that outstrips increase in domestic production would pressure the country's balance of payments with a high effective demand for imports. There being no controls to insulate the international reserves, a deterioration in foreign exchange resources would be inevitable. This would weaken the position of the peso vis-a-vis other currencies, a condition which would reflect itself in the free market exchange rate.

Fully cognizant of the danger, this Administration therefore pledges to do its utmost to maintain the sound fiscal performance which has characterized the last three years. The Administration shall not hesitate to utilize all its power and influence to keep this pledge, which has now become the cornerstone of our policy in the public sector.

With the disappearance from the scene of the exchange control system, fiscal and monetary policies will therefore be adopted to promote the selectivity in economic goals hitherto enforced by the controls. For instance, the controls have carried out such objectives as maintaining a production-oriented import pattern and insulating the international reserve from excessive demand. Now, the tariff on the fiscal side, and credit policies on the monetary side, will bear the brunt of influencing the pattern of import, production, and income distribution. They will also be charged with providing temporary protection and preferences to economically desirable industries which may require a little more time to adjust fully operations to a free economy.

The basic measures will mostly require congressional action. In the meantime, however, I am doing what we, within our powers in the Executive Branch, could possibly do to traverse this transition as smoothly as possible. I have directed that the margin be reduced by the Central Bank from 20 to 15 per cent to mitigate the impact occasioned by the widening of the free market under the third phase of decontrol on local producers and consumers.

I have also approved the redirection in our credit policies to meet the current and future monetary requirements of a decontrolling economy. While the selective "Portfolio Ceilings" are still being maintained for certain reasons, all other credit restraints have already been removed. The Central Bank has liberalized its rediscounting facilities and open market operations, and has cut down reserve requirements on demand liabilities to only 16 per cent, the lowest in its history. As it is now, there is hardly any restriction on credit expansion, save the financial limitations of the banks themselves. In line with our policy to attract foreign investments and in order to make available more funds to the productive sector, the reduction from the

75–100 per cent level to only 16 per cent, like other demand deposits of the required reserves against blocked fiduciary deposits, is being considered. This should effect an unfreezing of funds formerly required to be held against the blocked accounts. Another factor which should contribute to the easing of the monetary situation is the increased income flow of exporters under decontrol.

The impact of these measures is only beginning to be felt. As of now the scarcity of available funds still requires that portfolio priorities established by the Central Bank be continued. However, steps have been taken to strengthen the distribution of network of the country, by liberalizing credit for Filipino distributors dealing in domestice foodstuffs, placing loans for this purpose under Priority I. The matter of distribution is a crucial one for the economy. For instance, the lack of an adequate distribution network may be a significant cause for high prices in consuming areas even while regional surpluses may exist elsewhere. Public works projects, other development projects, and further appropriate credit measures will therefore be accelerated to augment the flow of money to the rural regions and improve the transportation aspect of distribution, especially by linking producing areas with consuming areas.

The Administration is taking other practical steps to increase the domestic availability of capital besides the monetary and fiscal measures. For example, full support will be extended Filipinos willing to avail themselves of the foreign loans and capital now being offered the country. As a consequence of the remarkable pick-up in our economy, international financial institutions, such as the World Bank, have expressed their readiness to assist us at this time. It is my deep satisfaction to state that the great private banks of the United States and other financing institutions have indicated their desire to extend credit facilities to us or invest in the Philippines if fair terms and climate of investment can be guaranteed by the Philippine government. An Office is therefore being created in the Central Bank specifically to extend technical assistance to investors, both foreign and domestic. This Office will help Filipino firms prepare project studies and draw up loan applications satisfactory to the foreign credit agencies. Pending enactment of a foreign investment law by Congress, this Office will also assist foreign investors with informational and counselling services. This Office will be the international investment window of the Central Bank, so to speak, which extends initial proceesing service for prospective foreign investors in this country. And when the foreign investment bill is enacted into law, this Office may be charged to implement the law.

We have also worked out measures to blunt any unreasonable price rises. Adequate foreign exchange will be made available to the NAMARCO for importation of essential commodities and to other pertinent agencies for importation of staples. This is of prime importance in order to ensure that commodity prices remain within reach of the masses and that speculative hoarding be prevented.

In the area of economic planning, some reorientation towards a decontrolled private enterprise system must be accomplished. With the economic situation growing more fluid and complex as larger decisions are left to the market forces, and the scope of the government's control over resource allocation narrows, the need for sound and sustained planning becomes more marked. An overall plan is needed to give broad direction and guidance to the diverse operations of the economy in the interest of orderly and continued development.

Though we have made remarkable advances in the last decade, we have still a long long way to full development. Our resources of investment capital and technological skills are limited in the face of all the possibilities. Consequently, these resources must somehow be applied to the particular uses which would gain the optimum overall benefit. Without planning, resources might very well remain idle, or be applied haphazardly. The job of the economic plan would be to highlight desirable projects from among competing projects, and extend them the necessary preferences in the competition for acquisition of resources.

But I must strongly emphasize that these measures which the Administration is taking, are not adequate to insure the country's continued progress when full decontrol has arrived. They must be bolstered up and complemented by bold and decisive legislation. I therefore urge the speedy enactment by Congress of the following complementary measures—the measures—the revision of the tariff, the repeal of barter, the a foreign investment bill, and a substitute measure for the exchange margin fee.

To perform properly its function under the new conditions, a revision of the Tariff and Customs Code is indicated. Recent studies on the distribution of present tariff rates among the different commodity categories have shown little correlation to essentiality. Neither are some rates adequate enough to extend protection to deserving industries. A tariff revamp will therefore be considered by Congress, with the aim of making the system more responsive to the needs of a decontrolled economy, and the increased competition of imported goods under decontrol.

While the revision of tarriff rates is in process, we have adopted some "stop-gap" necessary measures to afford immediate, through temporary protection, to local infant indus-

tries which will later fall under the mantle of tariff security. Such a measure is the restriction of certain commodity imports, particularly those at present under the "Unclassified Items" category, and produced locally in sufficient volume. This category is being broadened to include some items now outside of it, but whose banning would be imperative to eliminate direct competitive threat to particularly sensitive domestic industries.

Congress will also have to consider the repeal of barter. If the Philippine peso is allowed to seek its own equilibrium rate, the reason for barter than ceases to exist. I must point out that, should barter continue, a unified exchange rate would be extremely difficult to achieve, and the success of decontrol would be jeopardized.

Above all we have to pass a foreign investment law really intended to attract friendly foreign capital to the country. We have to admit that our own capital formation being small as yet, it does not have the capacity and the courage to go into highly speculative ventures like oil mining, or ventures that require heavy initial investment and very slow in producing profit like iron, silver, nickel, basic metals mining, or any mining for that matter. In these and several other fields of ventures to develop and utilize our natural resources as fast as we can, *we have need of the assistance of foreign investment.* We have vast natural resources to develop and develop right away. Let us not be *perros del Hortelano,* that refuse to eat and at the same time prevent others to eat. Let us also not lose sight of the fact that foreign investment here constitutes our own beach-head in foreign countries for our own foreign trade expansion and diversification. Let it not be forgotten also that a law for the attraction of foreign capital will not produce any positive results unless the foreign investor is assured of a favorable climate, a fair and just treatment, and a reasonable guarantee that the investor can enjoy the fruits of his ventures to the equitable measure established by generally recognized principles of international law.

With the eventual attainment of an equilibrium rate of exchange, there will no longer be any reason to impose extraordinary cost restrictions on imports, especially after the revision of the tariff. Yet, the government must make up for the substantial loss of revenue entailed by repeal of the margin, owing to the necessity of financing the expanding needs of the country, as well as countering the price rises consequent to decontrol. Existing sources of taxes are already being burdened as much as could be reasonably asked for. As it is, many business firms are already being subjected to a cost-price squeeze, and the recent price rises due to decontrol are having an eroding effect on the personal incomes of the people.

It seems only fair to pass on the incidence of new taxes primarily to the main beneficiaries of decontrol. For most of them, the rise in the exchange rate has represented a pure windfall. Tapping a part of this windfall for fiscal purposes would not only make up the required revenue to replace the margin fee, but would provide a powerful anti-inflationary or counter-cyclical weapon. It would also constitute a simple act of social justice. It being the eternal cosmic law at work—that those who want to reap must sow.

This then, my friends, is the broad outline of the Administration's program for the final stage of decontrol. However, the apparent acceleration of the decontrol program seems to have generated some speculation and injected an element of uncertainty into the business climate. Let me erase any doubts or confusion that may have arisen, by making this announcement: It is the Administration's considered decision to maintain the third phase of decontrol for as long as it takes to enact the basic legislative and executive measures which constitute the necessary complements to the monetary measures. There can be no full decontrol until this is accomplished. There shall be no full decontrol unless and until the transitional measures have been taken and found fairly adequate to stabilize the national economy for complete freedom from controls.

We are at a promising, though challenging period in our national affairs. We must grant that the transition from control to decontrol will work some difficulties on us. But these are passing and transitory, and are the sacrifices we pay for freedom. Also, there are those who question as to whether we can surpass or at least sustain under free enterprise the high rate of development achieved during the decade under controls. This can only be determined by the manner in which the different sectors rise to meet the challenges now posed before us. But as far as my administration is concerned, I have full faith and confidence in the vision, determination, guts, and pluck of the Filipino that I am fully convinced that our achievements in the economic field during the decade of the sixties will dwarf even the spectacular achievements of our National Recovery from the last World War.

Fellow countrymen, for fifteen years we have held the leadership among new independent countries in the field of economic development in Asia and Africa. Let us keep that leadership not for vain glory or national pride. Let us keep that leadership to prove that the democratic way of life, with freedom as its magic tool, is the real way to the redemption of the masses from misery, crime, disease, and ignorance. Democracy is the way of hope and love and abundant life.

PRESIDENT GARCIA'S SPEECH AT THE COMMENCEMENT EXERCISES OF THE UNIVERSITY OF SAN AGUSTIN, ILOILO CITY, SATURDAY AFTERNOON, MARCH 25, 1961

MOST REV. RECTOR, DISTINGUISHED MEMBERS OF THE FACULTY, MEMBERS OF THE GRADUATING CLASSES, LADIES AND GENTLMEN:

THE high academic honor you confer upon me today is one that any man would be proud to receive, and in all humility I accept it with gratitude and full appreciation of its significance. One of the immediate benefits of receiving this doctorate of laws, is that I become automatically an honorary alumnus of the University of San Agustin. It shall be my constant endeavor in all my thoughts and action to hold up high the honor and prestige of this famous institution of learning until the end of my days.

I am happy indeed to become a San Agustin alumnus—Class of 1961—and to be associated with this university whose name evokes a pageant of history, recalling the very roots of Christianity in the Philippines, calling to mind the origins of that which is now an integral part of our Filipino heritage.

You will recall that the very first missionaries to land in our shores and preach the gospel of Christ in the Philippines belonged to the Order of St. Augustine. It was they who broke the ground, so to speak, and it was this same Order which sowed the seeds of Christian faith which today gives our nation a distinctive character, and a unique identity in this part of the world.

The first parochial schools ever set up on Philippine soil were established by those courageous Augustinian missionaries. And it is a historical fact that the first educational center to offer secondary education in the Philippines was founded by the Augustinian Fathers as early as 1572.

History also records the notable achievements of the Augustinian Order in this country, and relates of the contributions made here in the fields of science, linguistics, literature, and history as well as religion, by learned and distinguished members of the Order.

The University of San Agustin, therefore, has a tradition that goes back to the beginnings of Christianity in the Philippines, and to the first meeting of our native Malayan culture with the culture of the West represented by Spain. The Filipino of today is largely the product of those two distinct cultures which subsequently merged into one, and which was further enriched by our contact with the culture of the New World at the turn of this century.

In the Philippines, therefore, there is a trinity of outstanding elements in our culture, and these are our native

Asian-Malayan, the Latino-Christian culture we inherited from Spain, and the Anglo-American democratic ideology.

This amalgam of three great cultures of the world is what we now claim as our own Philippine culture. It is our duty not only to preserve this cultural heritage but to enrich and develop it to higher horizons and vaster frontiers and make it worthy of the 21st century and the Eternity thereafter.

Oftentimes, there are supernationalists who are embarrassed that a great part of what we call Philippine culture "has merely been transplanted" to our soil from other lands. These puritans call only Philippine culture that which is indigenous to our land. This point of view has become anachronistic and no longer valid. In the great stream of our culture or any culture for that matter, there have flowed in confluence many tributaries from varied springs and sources of many times and climes. The Spanish culture, the American culture, and the Anglo-Saxon culture are similarly constituted.

So we need not blush for the fact that Filipino culture springs from many non-indigenous sources, any more than Europeans are ashamed of their debt to ancient Egypt, Greece, and Rome; or that American culture and ideology are a blend of practically all cultures of the world, ancient and modern. The great all-pervading essence that transmuted all these cultural forces into a real Filipino cultural creation is the breath of the Filipino soul, the essence of Filipinism.

Gentlemen, it took us one decade, the first decade of our Republic, to rebuild our beloved country devastated by World War II. After the conpletion of our national reconstruction, we plunged into the economic development program to which we are committing all our financial, industrial, and intellectual resources. We have accomplished in so short a time a tremendous job. A new, free, prosperous, and great democracy is rising in the Orient that promises to become the Paradise of Oceania. It has achieved spectacular material progress greater than that attained by any one of our contemporary independent republics.

But the important question suggests itself: has our cultural progress been brought into balance with our material well-being? Have we paralleled our material upswing with corresponding spiritual and moral uplift? This industrial mobilization and economic development saga to which we are totally committed, have we built them to a capacity as to nourish and sustain a rich cultural life?

Jesus Christ in his transcendental Sermon at the Mount revealed the cosmic priority of things. He said: "Do not be anxious about what to eat, or drink, or wear on. Seek ye first the Kingdom of God and His justice, and all these things shall be given you besides." If we were asked as

a nation whether we have attended to this priority of things in life, can we truthfully answer yes? Can we honestly say that we are showing equal concern to the nation's moral well-being as to its material possessions? Can we truthfully say that we have more concern for what we are that is life, than for what we have that is wordly possessions?

I am afraid, ladies and gentlemen, that our affirmative answer to these questions will be embarrassed by the realities in our national set-up. Right now we are preoccupied by the steadily and defiantly rising tide of criminality among teenagers. Our movies' most popular shows are those which depict lurid and cold-blooded murders and gangsterism. Our press' favorite headlines are society scandals, sordid stories of the social flotsam and jetsam. It buries in the obscure pages the stories of heroism, of motherly sacrifices, and acts of charity, love, and kindness, the epic efforts of young artists, and geniuses to survive in a world dead to all sense of beauty. We have evidences all around us that, despite our outstanding achievements in material progress, our cultural attainments for the uplift of the soul, for the moral enrichment of our individual and national life, have lagged behind.

This then is the challenge to the University of San Agustin and all other institutions of learning in our country. This venerable institution radiating with the Christian missionary zeal of its founders and maintainers and enthrooned in the grateful hearts of the people it serves, assume cultural leadership in this beautiful part of our country.

It is my considered view that this materialistic impetus we are witnessing must be matched by moral and spiritual revival. Hence, the necessity and the essentiality that the cult of the arts be placed centrally in the education of our youth. The cultural efforts of the nation derives its vitality from the schools and colleges which are charged with the education of the youth. The awakening of the noblest emotions of the heart, the germination of the highest aspirations of man, the deepening of the aesthetic sense of our youth, the stimulation of the higher purposes of life, the cultivation of the three great virtues of the heart—faith, hope and love—these are great goals of our cultural efforts; these are the potent tools with which to fight criminality, poverty, disease, ignorance, and social perversity.

In this connection, let me reiterate what I said in my last message to Congress on the state of the nation, viz: "I urge legislative consideration of the idea to grant qualified educational institutions a margin of curricular freedom to allow educational diversity in educational unity." This university dedicated to perpetuate the memory of one of the greatest saint-philosophers of the Church is an ideal setting for launching the cultural drive to attain these goals. As such

private institution established for the cult of Christian virtues, and proud of its impressive record of service to the nation, it has the curricular flexibility to give central emphasis to art and culture.

In conclusion, may I felicitate fervently, one and all, the new graduates of the University of San Agustin for having achieved on this day the educational goal they have set for themselves. The nation is proud of you. You will constitute part of the upper echelon of the Philippine manpower who will help build up the nation and make it worthy of our heroic past and our glorious future. On behalf, therefore, of the Philippine Republic, I wish you all the fullest measure of success in your chosen profession or vocation. Remember always that he who lives for the greater glory of God and for the happiness of his fellowmen forever dwells in Eternity's sunrise.

DECISIONS OF THE SUPREME COURT

[No. L-12573. 29 January 1960]

PAULINA DURAN, plaintiff and appellant, *vs.* BERNARDINO PAGARIGAN, defendant and appellee.

JUDGMENTS; PETITION FOR RELIEF; FAILURE OF COUNSEL TO INFORM CLIENT OF ADVERSE JUDGMENT DOES NOT CONSTITUTE EXCUSABLE NEGLIGENCE.—The failure of counsel to notify his client on time of an adverse judgment to enable him to appeal therefrom does not constitute excusable negligence. Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face.

APPEAL from a judgment and an order of the Court of First Instance of Cagayán. Ladaw, *J.*

The facts are stated in the opinion of the Court.

Felipe M. Casiano for the plaintiff and appellant.
Guillermo B. Fuertes for the defendant and appellee.

PADILLA, *J.:*

On 7 July 1953 Paulina Duran brought in the Court of First Instance of Cagayan an action to recover possession of one and one-half (1-1/2) hectares of a parcel of land lying in the western side of 10.1765 hectares situate at *sitio* Lacta, barrio of Bañgan, municipality of Sanchez Mira, province of Cagayan, donated to her by Antonio Duran, her deceased grandfather, which part of the parcel of land she alleged Bernardino Pagarigan, the defendant, had usurped sometime in December 1948; that said part of the parcel of land is planted to about 130 coconut trees yielding an income of ₱500 more or less annually derived from the sale of the fruits thereof; and that notwithstanding repeated demands to vacate that part of the parcel of land and to recognize her ownership thereof and to deliver to her its possession, the defendant had refused to do so. She prays that after hearing, judgment be rendered ordering the defendant to restore to her the possession of that part of the parcel of land; to pay her the sum of ₱2,000, the value of the fruits of the coconut trees planted in the land harvested by the defendant from January 1949 to the date of the filing of the complaint; and to pay the costs of the suit. She also prays for other just and equitable relief (civil No. 600-A).

In his answer and amended answer filed on 12 August and 19 September 1953 the defendant claims that that part of the parcel of land the possession of which the plaintiff seeks to recover, was acquired by him by pur-

chase from Ignacio Duran, the father of the plaintiff, in 1919 by means of a verbal contract which was ratified in a public instrument on 11 March 1936; that on 19 September 1936, for and in consideration of the sum of ₱20 paid by the defendant to the plaintiff and her father, they agreed to settle amicably their case involving the same part of the parcel of land pending in the Justice of the Peace Court of Sanchez Mira, Cagayan; and that the plaintiff's cause of action is already barred by the statute of limitations. The defendant prays that the plaintiff's complaint be dismissed; that she be ordered to pay him ₱1,000 as damages for filing a malicious complaint against him in court and to pay the costs; and that he be granted other just and equitable relief.

After trial, on 12 March 1954 the Court found and rendered judgment as follows:

From the evidence presented in this case, it appears that the defenddant has been in possession of the land in question since 1919 when he exchanged it with one carabao valued at ₱80.00 from Ignacio Duran, father of the plaintiff, under and by virtue of the Deed of Sale Exhibit 1; that the land covered by said deed of sale is as follows:

"RESIDENTIAL LAND

"On the North by properties of Carlos Perdido, Juan Tabaonan, and Saturnino Constantino, 133 meters; on the East, by property of Ignacio Duran, 145 meters; on the South by property of Ignacio Duran, 3 meters; and on the West by property of Rufino Blanco, 145 meters, or having an area of 1.7690 has., the said land is declared under taxation No. 17920 in the name of Ignacio Duran of the Municipality of Sanchez Mira, Province of Cagayan."

that in 1936 the defendant built his house on said land; that Paulina Duran and her grandfather, Antonio Duran, questioned the sale made by Ignacio Duran, but the case was settled by virtue of Exhibit 2, whereby the defendant paid Antonio Duran and Paulina Duran the sum of ₱20.00 and that thereafter Antonio Duran and Ignacio Duran have respected the possession of said defendant over the said land. Hence, the plaintiff may not now question the defendant's ownership of the land covered by the Deed of Sale, Exhibit 1.

At the ocular inspection conducted by the Court, it was found out that the defendant was occupying a bigger portion than what is covered by said Exhibit 1, and he should deliver to plaintiff the excess. He should limit his possession and occupation of said portion as follows: On the northern side 133 meters from West to East; on the eastern side from North to South 145 meters; on the southern side from West to East 3 meters; and on the western side from North to South 145 meters.

No sufficient evidence has been presented to support any claim for damages.

In view of the foregoing, the Court hereby renders judgment—(*a*) ordering the defendant to deliver to the plaintiff those portions of the land in excess of what is covered by the Deed of Sale, Exhibit 1, as follows: on the northern side 133 meters from West to East; on

the eastern side from North to South 145 meters; on the southern side from West to East 3 meters; and on the western side from North to South 145 meters; and (*b*) to pay the costs.

On 30 November 1954 the plaintiff filed a "petition to set aside judgment" on the ground of fraud, mistake and excusable neglect. On 7 January 1955 the Court denied the plaintiff's petition. On 15 January 1955 the plaintiff filed a motion for reconsideration. On 10 February 1955 the Court denied the plaintiff's motion. The plaintiff has appealed to this Court.

It appears that after trial, on 12 March 1954 the Court rendered judgment for the defendant; that on 22 March 1954 counsel for the appellant received notice of the judgment; that on 10 September 1954 the appellee filed a motion for execution of the judgment of 12 March 1954; that on 20 September 1954 the Court granted the appellee's motion for execution; that on 30 November 1954 the appellant filed a motion to set aside the judgment; that on 7 January 1955 the Court denied the appellant's petition to set aside the judgment; that on 15 January 1955 the appellant filed a motion for reconsideration; and that on 10 February 1955 the Court denied the appellant's motion for reconsideration.

The appellant having filed her "petition to set aside judgment" under Rule 38 on 30 November 1954 beyond six months after the judgment had been rendered on 12 March 1954, the same was filed out of time and the Court correctly denied her petition.[1] The failure of her counsel to notify her on time of the adverse judgment to enable her to appeal therefrom does not constitute excusable negligence. Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face.

The judgment and the order denying the petition to set aside judgment appealed from are affirmed, with costs against the appellant.

Parás, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepción, Reyes, J. B. L. Endencia, Barrera, and *Gutiérrez David, JJ.*, concur.

Judgment and order affirmed.

[1] Section 3, Rule 38; Isaac vs. Mendoza, G.R. No. L-2820, 21 June 1951; Gana *vs.* Abaya, 52 Off. Gaz. 231.

[No. L-12692. 30 January 1960]

COSMIC LUMBER COMPANY, INC., plaintiff and appellee, *vs.* AGAPITA MANAOIS, defendant and appellant.

OBLIGATIONS AND CONTRACTS; WHEN COURT MAY FIX A PERIOD.—Where in a contract of sale on credit no time for payment of the obligation was stipulated or fixed by the parties, and from the nature and the circumstances of the obligation it can be inferred that a period was intended, the Court may fix the period for payment pursuant to article 1197 of the New Civil Code.

APPEAL from a judgment of the Court of First Instance of Pangasinán. Muñoz, *J.*

The facts are stated in the opinion of the Court.

Primicias & del Castillo for the plaintiff and appellee.
José Rivera for the defendant and appellant.

PADILLA, *J.:*

The defendant's appeal from a judgment of the Court of First Instance of Pangasinan, Fourth Branch, ordering her to pay the plaintiff the sum of ₱4,147.74, lawful interest thereon from 24 March 1954 when the original complaint was filed until fully paid (civil case No. 12902), was certified by the Court of Appeals to this Court for it involves only a question of law.

As agreed upon by the parties, the facts are: On different dates from 10 November 1952 to 30 June 1953 the appellant bought, took delivery and received from the appellee hardware goods, lumber and construction materials valued at the total sum of ₱12,127.57 (par. 1, stipulation of facts; Exhibits A to Z; AA to OO), and from 4 November 1952 to 10 March 1954 the appellant paid the appellee the total sum of ₱6,979.83 which the latter credited to the foremer's account (par. 3, stipulation of facts; Exhibits PP, PP-1, QQ, QQ-1 to QQ-2). On 23 December 1954, after the original complaint had been filed by the appellee (24 March 1954), the appellant paid the appellee the sum of ₱1,000 which the latter also credited to the former's account (par. 6, stipulation of facts), thereby reducing her total indebtedness to ₱4,147.74.

The appellant does not deny that she received the wares and materials listed in the invoices (Exhibits A to Z and AA to OO), and that she is still indebted to the appellee in the sum of ₱4,147.74. At the hearing of the case on 4 June 1956, her counsel withdrew the objection (filed earlier during the day) to the items listed in some of the invoices (Minutes of the session of 4 June 1956). However, she argues that as no time for payment was stipulated or fixed and from the nature and the circumstances of the obligation it could be inferred that a period was intended, the Court should fix the period for payment pursuant to article 1197 of the new Civil Code.

The parties entered into a contract of sale on credit. In the invoices (Exhibits A to Z and AA to OO) of the wares and materials sold and delivered to the appellant, the words "credit sales" appear and it is stated that—

All civil actions on this contract shall be instituted in the courts of the City of Dagupan and it is hereby agreed that all my/our purchases from this Company are payable in the said City of Dagupan. It is agreed that if this bill is not paid within ———— days from date hereof I/we will pay interest at the rate of 10 per centum per annum on all overdue accounts. The buyer hereby agrees to pay any and all attorney's fees and court costs should the seller institute legal action. Goods travel at buyer's risk. No claim of whatsoever nature will be considered after 24 hours from date of delivery.

The parties intended to fix a period for payment of the appellant's obligation but failed to do so. Under article 1197 of the new Civil Code, the Court may fix it. Taking into consideration that from 10 November 1952, the first sale, and 30 June 1953, the last sale, to the present, more than six and nearly seven years already have elapsed, the appellant who does not deny her obligation must be ordered to pay the appellee the amount she still owes it within fifteen (15) days from the date the judgment shall have become final.

With the slight modification just mentioned, the judgment appealed from is affirmed, with costs against the appellant.

Parás, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Endencia, Barrera, and *Gutiérrez David, JJ.*, concur.

Judgment affirmed with slight modification.

[No. L-13431. November 24, 1959]

VICENTE CAHILO, petitioner, *vs.* JUDGE PASTOR DE GUZMAN and SIMEON LA FUENTE, respondents.

1. COURT OF AGRARIAN RELATIONS; JURISDICTION; TENANCY; REINSTATEMENT AND LIQUIDATION OF CROPS; FAILURE OF TENANT TO INTERVENE IN ACTION OVER OWNERSHIP OF LAND NOT ESTOPPEL.—The failure of a tenant to intervene in a case wherein the ownership of the land in which he is working is being litigated between two claimants cannot be considered an an estoppel on his part to file an action before the Court of Agrarian Relations for reinstatement and liquidation of crops, because this action comes under the exclusive jurisdiction of said court as provided for in section 21 of Republic Act 1199.

2. ID; ID; ID; JURISDICTION OVER A RECEIVER.—Appellant's contention that the Court of Agrarian Relations has no jurisdiction over his person because he is sued in his capacity as receiver and as such can not be sued without the consent of the court, is untenable. Section 7 of Rule 61 of the Rules of Court provides that "Subject to the control of the court in which the action is pending, a receiver shall have power to bring and defend, as such, actions in his own name", and it is precisely under this rule that the present action for reinstatment as tenant and for a liquidation of crops was instituted. This is more so when the tenant's ejectment was affected by appellant after he had taken over the property as receiver.

REVIEW by Certiorari of a decision of the Court of Agrarian Relations.

The facts are stated in the opinion of the Court.

Juan S. Aritao for the petitioner.

Eugenio T. Samicas for respondent Simeón La Fuente.

Nora G. Nostratis and *Fausto T. Allado* for the respondent Judge.

BAUTISTA ANGELO, *J.:*

Simeon La Fuente filed a petition before the Court of Agrarian Relations praying for his reinstatement as tenant of a portion of a lot situated in Himamaylan, Negros Occidental, and for a liquidation of the sugar crop harvested therefrom corresponding to the agricultural year 1956-1957.

The action was brought against respondent who is the receiver appointed by the Court of First Instance of Negros Occidental in Civil Case No. 2435. He set up the defense that petitioner had no right to work as tenant on the land in question because he was placed there as such by one Francisco Sanicas whose ownership over the land is subject to controversy in said Civil Case No. 2435; that petitioner is now estopped to file this petition because of his failure to assert his right as tenant during the trial of the aforementioned case; and that the whole sugar crop harvested from the land in question for the agricultural year 1956-1957 had been mortgaged by Francisco Sanicas

to the Philippine National Bank to guarantee certain crop loan obtained from the latter.

After the reception of the evidence of both parties, the court, presided over by Judge Pastor de Guzman, rendered judgment (*a*) declaring petitioner to be the tenant of the land in question from 1953 up to 1957; (*b*) ordering respondent to pay petitioner the sum of ₱421.65 as his share of the sugar produce for the agricultural year 1956–1957; and (*c*) ordering respondent to deliver to petitioner 667.8 kilos of molasses as his share for the same agricultural year or its equivalent in money computed at the current price in the locality. It is from this decision that respondent interposed the present petition for review.

It appears that Lot No. 1687–B of Himamaylan cadastre was originally owned by Juan Labansawa as evidenced by Original Certificate of Title No. 442 of Negros Occidental. Upon his death, the lot was inherited by his brothers and sisters who had been in possession thereof since then up to 1952. In this year, Isabel Senoro, *et al.* fraudulently executed a declaration of heirship wherein they declared themselves to be the heirs of Juan Labansawan by virtue of which they were able to secure from the register of deeds the issuance of a new transfer certificate of title in their name. Soon thereafter, Isabel Senoro, *et al.* executed a deed of sale in favor of Socorro Suldivilla married to Francisco Sanicas who in turn secured the issuance of a transfer certificate of title over the land in her name, and armed with this title, the spouses succeeded in ejecting from the lot the heirs of the original owner. So on August 20, 1952, the Labansawan heirs filed a complaint before the Court of First Instance of Negros Occidental against the spouses Sanicas for the recovery of the property plus damages (Civil Case No. 2435). In due time, Vicente Cahilo, respondent herein, was appointed by the court receiver of the property in litigation with authority to administer the same until the final termination of the case. After his appointment, respondent took possession of the property and gave notice to petitioner to cease working on the land as tenant of Francisco Sanicas. This ejectment gave rise to the present proceedings.

One of the questions raised by appellant is that the agrarian court erred in finding that appellee is a tenant of the land in question from 1953 to February, 1957 for the reason that he was placed there as such by Francisco Sanicas whose title to the property is disputed and is subject to litigation in a case pending appeal before the Court of Appeals.

To meet this point, suffice it to quote the following finding of the agrarian court: "The Court finds that the

tenancy relationship between the plaintiff and Francisco Sanicas, former possessor of the land, has been sufficiently established by reliable and convincing evidence. The negative testimony of the witnesses for the defendant denying such tenancy relationship cannot prevail over the positive testimony of the plaintiff and his witnesses besides documentary evidence on record to prove such claim. The entries found in Exhibit 'D' are, in the opinion of the Court, indubitable writings which deserves such credence and of which no evidence to the contrary was ever presented by the defendant. Besides the defendant Vicente Cahilo admits having no knowledge as to whether or not plaintiff Simeon Lafuente is the tenant of Francisco Sanicas or to have inquired from anybody regarding such circumstance when he took over the possession of the property as receiver." This is a question of fact which we cannot now look into it appearing that the same is supported by substantial evidence.

It is true that petitioner-appellee has not intervened in the civil case wherein the ownership of the property is being litigated between the heirs of the original owner and the spouses Sanicas, but this is because he did not consider it necessary for he had every reason to expect that the Sanicas would protect his interest. Even then we believe that such failure cannot be considered as an estoppel on his part to file the present action before the Court of Agrarian Relations because his claim for reinstatement and iliquidation of crop comes under the exclusive jurisdiction of said court as provided for in Section 21 of Republic Act 1199.

Appellant likewise disputes the finding of the agrarian court to the effect that petitioner-appellee is entitled to a 70% share of the 1956–1957 sugar crop and that considering the current price then of sugar said share amounts to ₱421.65. We also find no merit in this claim for, according to the agrarian court, in 1953 Francisco Sanicas entered into an oral contract of tenancy with petitioner-appellee granting the latter a sharing participation of 70% because it was agreed that the tenant would provide for all items of production as well as for the cultivation expenses. And as regards the liquidation made, the agrarian court made the following finding: "As regards the liquidation issue, the evidence proved that in the year 1956–1957, the ratoon crop (calaanan) of the plaintiff realized the quantity of 44.62 piculs of sugar and 954 kilos of molasses representing the net share of the planter (Francisco Sanicas) (Exhibit A). The defendant in his capacity as receiver of the property sold said 44.62 piculs of sugar at ₱13.50 and realized total amount of ₱603.37. The defendant up to the trial of this case has made no

accounting of the 954 kilos of molasses. Legally, the plaintiff herein is entitled to the sum of ₱421.65 as his share of the sugar crop and 667.8 kilos of molasses computed at their sharing agreement of 70–30." This is also a question of fact which cannot now be looked into it being supported by substantial evidence.

The final question raised by appellant refers to the lack of jurisdiction of the agrarian court over his person because, it is claimed, he is sued in his capacity as receiver in Civil Case No. 2435 and as such cannot be sued without the consent of the court. This contention is also untenable for under Section 7, Rule 61, "Subject to the control of the court in which the action is pending, a receiver shall have power to bring and defend, as such, actions in his own name", and it is precisely under this rule that the present action was instituted. This is more so when the ejectment of appellee was effected by appellant after he has taken over the property as receiver in the aforementioned case.

Finding the decision appealed from to be in accordance with law and the evidence, the same is hereby affirmed, with costs.

Parás, C. J., Bengzon, Padilla, Montemayor, Labrador, Endencia, Barrera, and *Gutiérrez David, JJ.*, concur.

Decision affirmed.

[No. L-11175. October 20, 1959]

JAI ALAI CORPORATION OF THE PHILIPPINES, petitioner, *vs.* COURT OF TAX APPEALS and THE COLLECTOR OF INTERNAL REVENUE, respondents.

1. TAXATION; AMUSEMENT TAX; JAI ALAI CORPORATION NOT A FRANCHISE HOLDER.—There is no provision in Commonwealth Act No. 485 supporting the theory of petitioner corporation that it is a franchise holder and is not enumerated in said Act. If it had been the intention of the National Legislature to create a special franchise for the corporation it would have, in accordance with practice, enacted a special law for the purpose. It has also been the practice to grant a franchise only to public utilities, in which capital requirements are enormous and returns slow. Petitioner is not a public service or a public utility. It is organized under a general act. The provisions in the law and in the executive orders implementing it giving a share in the bets to the National Treasury is in consonance with the policy of requiring games of a gambling nature to contribute funds for charitable institutions. Unless such a share for charitable institutions is given, such games, which are strictly a form of gambling, would have no justification for their existence or maintenance. But such authority to conduct gambling games, where bets are made, is no reason or argument for the claim that such gambling institutions may not be subject to the ordinary fees collected from other gambling establishments.
2. ID.; PERCENTAGE TAX; EXEMPTION FROM TAXES NOT PRESUMED.—The theory that petitioner corporation is exempt from payment of the graduated percentage taxes under paragraph 1, section 260 of C.A. 466, is not supported by the records of the proceedings in relation to the enactment of Republic Act No. 418. If such had been the intention of Congress, it would have been expressly stated in the amendatory law. Exemptions are never presumed. They must be expressed in the clearest and most unambiguous language, and not left to mere implication. (N.Y. ex rel Schurz, et al., *vs.* Cook, 148 U.S. 397; Got. of P.I. *vs.* Monte de Piedad, 35 Phil. 42; Asiatic Petroleum Co., *vs.* Llanes, 49 Philippine 466; Collector of Internal Revenue *vs.* Manila Jockey Club, Inc., G.R. No. L-8755, March 23, 1956). The only reasonable inference to be derived from Republic Act No. 418 is to revert the Jai Alai to its former status as a place of amusement, subject to tax under paragraph 1 of Section 260, as it had always been prior to the enactment of Republic Act No. 39.
3. ID.; REAL ESTATE DEALERS' FIXED TAX; OWNER OF RENTAL PROPERTY LIABLE.—Although petitioner is not engaged in the business of real estate it falls under section 194 (s), C.A. No. 466, as amended by Republic Act No. 588, because it is an owner of rental property rented for an amount of ₱3,000.00 or more a year, and this rental property is not connected with the premises used for the Jai Alai games. As such it is liable for the payment of real estate dealers' fixed tax.

REVIEW of a decision of the Court of Tax Appeals.

The facts are stated in the opinion of the Court.

Artemio M. Lobrín for the petitioner and appellant.

Solicitor General Ambrosio Padilla, Assistant Solicitor General José P. Alejandro and *Attorney César L. Kierulf* for the respondents and appellees.

LABRADOR, *J.:*

Appeal from a decision of the Court of Tax Appeals affirming an order of the respondent Collector of Internal Revenue requiring the petitioner to pay deficiency amusement taxes, including surcharges and real estate dealer's fixed tax, in the aggregate sum of ₱61,586.85.

Petitioner is a corporation organized under the laws of the Philippines, operating jai alai games (Pelota Basca) with betting in accordance with the provisions of Commonwealth Acts Nos. 485 and 601. It began operating sometime in 1940, and in accordance with said Acts the land on which the building is erected and the buildings thereon shall become the property of the Government of the Philippines after 25 years of operation.

On October 26, 1954, an examiner of the respondent Collector of Internal Revenue made an assessment of amusement tax on gross receipts derived from admissions to the Jai Alai from June 18, 1949 to the end of December, 1954, totalling ₱62,586.85. Petitioner contests the assessment on various grounds, the first of which is, that it is exempt from any and all taxes not embraced in Commonwealth Act No. 485, and the imposition of the taxes against it violates the provisions of the Constitution impairing the obligation of contracts. This contention is based on the theory that Commonwealth Act 485, as implemented by Executive Orders Nos. 135 and 168, both series of 1948, has created a contractual relationship between the Government and the petitioner, and the imposition of taxes other than those mentioned in said statutes is unconstitutional.

Section one of the Commonwealth Act 485 provides as follows:

"Any provision of existing law to the contrary notwithstanding, it shall be permissible in the game of Basque pelota, a game of skill (including games of pala, raqueta, cestapunta, remonte and mano), in which professional players participate, to make either direct bets or bets by means of a totalizer; Provided, That no operator or maintainer of a Basque Pelota court shall collect as commission a fee in excess of twelve per centum on such bets, or twelve per centum of the receipts of the totalizer, and of such per centum three shall be paid to the Government of the Philippines, for distribution in equal shares between the General Hospital and the Philippine Anti-Tuberculosis Society."

Executive Order No. 135, s. of 1948, regulates the establishment, maintenance and operation of *Basque pelota* games. The executive order provids that city or municipal mayors shall supervise the establishment, maintenance

and operation of such games within their respective jurisdictions (sec. 2); that said mayors shall enforce laws as well as regulations, regulating jai-alai games and the construction and maintenance of buildings where the games are played, etc. (Sec. 3); prohibits operation of such games without a permit from the mayor (Sec. 4); imposes a license fee of ₱500 annually for each basque pelota fronton and ₱18.00 each annually for pelotaris, judges, or referees and superintendents (Sec. 5); prohibits persons under 16 years of age from carrying firearms or deadly weapons inside any basque pelota fronton (Sec. 9); prohibits card games or any of the prohibited games within the premises of any fronton (Sec. 10); fixes the days and hours of operation (Sec. 14); requires the licensing of *pelotaris*, judges, referees, etc. (Sec. 15); requires the installation of an automatic electric totalizator in the premises where the games are played (Sec. 16); fixes the face value of wager tickets in an amount not exceeding ₱5.00 for each, and requiring that said face values be the basis of the payment of dividends after eliminating fractions of ₱0.10 (Sec. 18); regulates the participation of the corporation in the dividends and the share of the National Treasury therein, thus: 10½% commission on the total bets, for the operator; 4½% of such bets, for the National Treasury; 85% of the total bets, to be distributed in the form of dividends among holders of winning numbers or combinations; a tax of ½% of the total bets (to be taken from the 10½% of the operator) to cover the expenses of the personnel assigned to supervise the operation of the games (Sec. 19); and provides supervision over the conduct of the games (Sec. 20). Executive Order No. 168, dated August 25, 1948, amends the above executive order on the days and hours of operation and on the distribution of wager funds. In accordance with this executive order, the commission of operators is 11½% of the total bets, the share of the National Treasury is 3%; the expenses of personnel supervising operation of games is ½% of total bets, and 85% of the total bets is retained for distribution as dividends among the holders of numbers or combination of numbers.

We find no provision in Commonwealth Act No. 485 supporting the theory that petitioner is a franchise holder and is not responsible for any tax or assessment not enumerated in the said act. The practice heretofore adopted by the National Legislature is to enact a special law, if it decides to create a special franchise for a corporation, and insert in the franchise an express provision that taxes or assessment included in the franchise shall be "in lieu of taxes." These common features of a special franchise are absent in the case at bar. In the first place, there is no special law creating the Jai Alai Corporation, neither

is there a provision that such corporation is free from payment of taxes other than those enumerated in Commonwealth Act No. 485.

It has also been the practice to grant a franchise only to public utilities, in which capital requirements are enormous and returns slow. Some of the franchises granted by the Government are those given the Manila Railroad Company, the Manila Electric Company and the Philippine Long Distance Telephone Company. The Jai Alai is not a public service or a public utility. The Corporation is organized under a general act. The provisions in the law and in the executive orders implementing it giving a share in the bets to the National Treasury is in consonance with the policy of requiring games of a gambling nature to contribute funds for charitable institutions. Unless such a share for charitable institutions is given, such games, which are strictly a form of gambling, would have no justification for their existence or maintenance. But such authority to conduct gambling games, where bets are made, is no reason or argument for the claim that such gambling institutions may not be subject to the ordinary fees collected from other gambling establishments.

Neither is the provision that after 25 years the building and land belonging to the corporation shall become properties of the Government a ground or reason for relieving the Jai Alai Corporation of the ordinary taxes. The ordinary game or amusements tax also finds no similarities between the case of the petitioner with the Manila Railroad Company, the Manila Electric Company, because the said companies were taxed at the rate of from 1-1/2% of their gross earnings "in lieu of all taxes", which is not the same as in the case before us. We, therefore, find no merit in the first claim of petitioner-appellant.

The second question raised in the appeal is, whether or not petitioner is liable for the 20% deficiency amusement tax on unclaimed dividends, differences or breakages, management fees, and admission fees from May 4, 1948 to June 17, 1949. It is to be noted in connection with this question that wager funds, management fees, differences or breakages and unclaimed dividends all go to the corporation and form part of the gross receipts of the petitioner. There is no valid reason for not including these in the gross receipts and therefore subject to tax.

The third question relates to a claim from absolute exemption from the graduated percentage taxes, because of the amendment of Republic Act No. 39 by Republic Act No. 418. Third paragraph of Section 8 of Republic Act No. 39 specifically contains the word "Jai Alai" as

liable to 20% of the gross receipts, together with race tracks. Said third paragraph reads as follows:

"In the case of cockpits, cabarets, and night clubs, there shall be collected from the proprietor, lessee or operator a tax equivalent to ten per centum, and in the case of race-tracks and Jai alai, twenty per centum of the gross receipts, irrespective of whether or not any amount is charged or paid for admission: Provided, however, That in the case of race-tracks, this tax is in addition to the privilege tax prescribed in section one hundred and ninety-three. For the purpose of amusement tax, the term gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place."

In Republic Act No. 418, said third paragraph was amended, and the word "and Jai Alai" were aliminated, so that only race tracks are subject to 20% of the gross receipts, thus:

"In the case of cockpits, cabarets, and night-clubs, there shall be collected from the proprietor, lessee, or operator a tax equivalent to ten per centum, and in the case of race-tracks, twenty per centum of the gross receipts, irrespective of whether or not any amount is charged or paid for admission: Provided, however, That in the case of race-tracks, this tax is in addition to the privilege tax prescribed in section one hundred ninety-three. For the purpose of amusement tax, the term "gross receipts" embrace all the receipts of the proprietor, lessee, or operator of the amusement place." (Sec. 2, par. 3 of Republic Act No. 418).

It is contended that the Jai Alai is exempt from payment of the other amusement taxes, graduated according to the amount of receipts and specified in sub-paragraphs a,b,c,d,e,f,g,h and i of paragraph 1 of Section 260, C.A. 466. No. stretch of the imagination or amount of reasoning can produce the conviction that the change which, exempts the Jai Alai from the 20% of gross receipts imposed by said paragraph 3, had the effect of exempting said Jai Alai from the graduated taxes specified in paragraph one of Sec. 260, C.A. 466, and in its sub-paragraphs. The records of the proceedings show that the original House bill No. 1461, which was later promulgated into Republic Act No. 418, did not contain said elimination, but said elimination was made in the Senate, without explanation of any kind. We can not go beyond the actual terms of the statutes to determine what the legislative intent was. If such intention had been to exempt the Jai Alai from payment of the graduated scales of taxes contained in paragraph 1 of Section 260, the exemption should also have been expressly stated in the amendatory law.

Prior to the enactment of Republic Act No. 39, the Jai Alai was liable to graduated taxes under paragraph 1 of Section 260 of the National Internal Revenue Code. By Republic Act No. 39, the tax was changed from such graduated taxes to 20% of the gross receipts. But when Republic Act No. 418 was passed on June 18, 1949, and Jai Alai was suppressed from those that should be liable

to the 20% on gross receipts, the apparent intention of the Legislature was to make the Jai Alai responsible

As previously, that is before Republic Act No. 39 took effect. The theory raised on petitioner's behalf, that it ceased to be responsible for the graduated taxes under paragraph 1 of Section 260 is not supported by the records of the proceedings in relation to the enactment of Republic Act No. 418. Exemptions are never presumed. They must be expressed in the clearest and most ambiguous language, and not left to more implication. (N.Y. ex rel Schurz, et al., vs. Cook, 148 U.S. 397; Govt. of P.I. vs. Monte de Piedad, 35 Phil. 42; Asiatic Petroleum Co., vs. Llanes, 49 Philippine 466; Collector of Internal Revenue vs. Manila Jockey Club, Inc., G.R. No. L-8755, March 23, 1956). The only reasoable inference to be derived from Republic Act No. 418 is to revert the Jai Alai to its former status as a place of amusement, subject to tax under paragraph 1 of Section 260, as it had always been prior to the enactment of Republic Act No. 39.

It is claimed under the fourth assignment of error that the petitioner cannot be held liable for the payment of the real estate dealer's fixed tax because a real estate dealer includes only persons engaged in the business of letting or renting property on their own account and holding themselves as dealers in real estate, and it is claimed that the Jai Alai is not such business. The petitioner, however, has overlooked or ignored the last part of the law, that is, Section 194 (s), C.A. No. 466, as amended by Republic Act No. 588, which took effect on September 22, 1950, in which provides:

"* * * 'Real estate dealer' includes any person engaged in the business of buying, selling, exchanging, leassing, or renting property on his own account as principal and holding himself out as a full or part-time dealer in real estate or as an owner of rental property or properties rented or offered to rent for an aggregate amount of three thousand pesos or more a year.

It is true that the Jai Alai is not engaged in the real estate business, but it is an owner of a rental property or property offered for rent for more than ₱30,000 a year, because the "Keg Room," the "Bamboo Bar, " and the "Popular Bar," are leased to Joaquin Lopez for ₱2,500 a month. It is true that this rented property is part of the Jai Alai building, but it is not directly or indirectly connected with the Jai Alai games. The petitioner is not made to pay the taxes because of operating the Jai Alai "Sky Room," which overlooks the floor used for the "pelota" games. The "Keg Room," and "Popular Bar," are separated from the floor used for the "pelota" games. In short it is true the Jai Alai is not engaged

in the business of real estate, but it falls under the last provision of the law because it is an owner of rental property, and this rental property is not connected with the premises used for the Jai Alai games.

In its fifth assignment of error, it is claimed that petitioner herein is entitled to the return of ₱75,000 deposited on various dates by installments to prevent distraint and levy during the pendency, reinvestigation and reconsideration of the case in the Bureau of Internal Revenue. The court below found that this amount was paid in installments in partial payment of taxes due from the petitioner. The accountant of the petitioner on January 25, 1953, stated thus: "We hereby certify that the following payments were made on our amusement taxes and obligations with the Bureau of Internal Revenue." The Collector of Internal Revenue applied the said amounts on the deficiency amusement tax on gross receipts from May 4, 1948 to June 17, 1949, amounting to ₱73,879.89. Note that the other deficiency taxes were due on admission fees collected from June 18, 1949 to December, 1954, amounting to ₱59,969.44, on the operation of the Sky Room, amounting to ₱1,875.02, and real estate dealer's fixed tax for the period from the second quarter of 1949 to the 4th quarter, 1954, amounting to ₱862.50.

There is no merit in petitioner's claim for the return of the amount of ₱75,000 deposited with the Bureau of Internal Revenue, for the reason that this amount was paid by the petitioner expressly for the purpose of covering the deficiency taxes due from it.

For all the foregoing considerations, the decision of the Court of Tax Appeals is hereby affirmed *in toto*.

Parás, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Endencia, Barrera, and *Gutiérrez David, JJ.*, concur.

Decision affirmed in toto.

DECISIONS OF THE COURT OF APPEALS

[No. 22419-R. June 23, 1960]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ROMEO C. ZUÑIGA and DOMINGA GALICIA, accused and appellants.

1. CRIMINAL LAW; CONCUBINAGE; MEANING OF WORD "COHABIT."—The word "cohabit", as used in Article 334 of the Revised Penal Code, has a definite meaning. The authorities are agreed that said term means "to dwell together, in the manner of husband and wife, for some period of time, as distinguished from occasional, transient interviews for unlawful intercourse." People *vs.* Pitoc, 43 Phil., 758; Ocampo *vs.* People, 72 Phil., 268. If a married man's conduct with a woman who is not his wife was not confined to occasional, transient interviews for carnal intercourse, but is carried on in the manner of husband and wife and for some period of time, then such association is sufficient to constitute cohabitation within the meaning of the law. Proof of actual sexual intercourse is not necessary.
2. ID.; ID.; EVIDENCE; FAILURE OF ACCUSED TO TESTIFY.—The failure of an accused to take the witness stand to contradict the claims of the complainant and his witness to show that he and his co-accused were living together in the same house raises no unfavorable inference against him, for, under the law, the neglect or refusal of an accused to be a witness shall not in any manner prejudice or be used against him. Section 1, paragraph (*c*), Rule III, Rules of Court.

APPEAL from a judgment of the Court of First Instance of Manila. Gatmaitan, *J.*

The facts are stated in the opinion of the Court.

Pascual G. Mier, for accused and appellant Romeo Zuñiga.

K. Digno M. Asuncion, for accused and appellant Dominga Galicia.

Assistant Solicitor General Antonio A. Torres and *Solicitor Antonio M. Consing,* for plaintiff and appellee.

NATIVIDAD, *J.:*

The defendants were charged in the Court of First Instance of Manila with the crime of concubinage. After trial, they were convicted of the crime charged and sentenced, defendant Romeo C. Zuñiga to suffer an indeterminate penalty of from two (2) months and one (1) day of *arresto mayor* to one (1) year, eight (8) months and twenty (20) days of *prision correccional,* and defendant Dominga Galicia, to two (2) years, four (4) months and one (1) day of *destierro* from a radius of 25 kilometers around the City of Manila, and each to pay the proportionate part of the costs. From this judgment, both defendants appealed.

The evidence of the prosecution shows that the defendants Romeo Zuñiga and Dominga Galicia, who were both residents of Bulan, Sorsogon, had been living together as husband and wife without the benefit of marriage for several years prior to September 20, 1949. Out of that union were born four children named Verna, Zorina, Safiro and Boy.

Sometime in the year 1949, Romeo Zuñiga met the complainant, Dominga Dosdozen, then an employee of the Bureau of Commerce. After a short courtship, Romeo Zuñiga and Dominga Dosdozen were married on September 20, 1949, at the Cosmopolitan Student Church at Taft Avenue, Manila. After the marriage, they lived together in a house at No. 1176 Pennsylvania Street, Manila, until the year 1953 when they moved to Project 4, Quezon City. Out of this union, no child was born.

About the end of January 1956, Romeo Zuñiga left the conjugal home, but came back thereto after two days. A few months thereafter, he again left the conjugal home, but came back sometime in the year 1956 only to take his personal belongings, alleging that he was going to live with his relatives whose names he did not tell. The complainant opposed this plan, but Romeo insisted.

Suspicious of Romeo's conduct, the complainant began shadowing him. On the 10th day of June 1956, she found out that Romeo was living with his co-defendant Dominga Galicia at No. 480 (Int. 30) Lealtad Street, Sampaloc, Manila. In view of this discovery, the complainant asked Romeo's uncle, the witness Gonzalo Reducto, to accompany her to said house so that she could talk to her husband.

In the morning of June 25, 1956, the complainant and Gonzalo Reducto went to house No. 480 (Int. 30) Lealtad Street, Sampaloc Manila. They found in that house Romeo in underwear and Dominga Galicia wearing a house dress taking care of a small child. The complainant made an attempt to talk to her husband, but the latter refused to entertain her alleging that that was not the proper place for them to talk as it would create a scandal and told her to go home. Thus told, the complainant and Gonzalo Reducto left the house. As Romeo failed to return to the conjugal home, the complainant went back to that house in Lealtad Street. She found, however, that the same had already been vacated. Upon further inquiry, she found out in the Office of the Civil Registrar of the City of Manila a birth certificate of the child Debra Jennifer Zuñiga, Exhibit "E", which shows that that child was born on January 17, 1952, and registered as the legitimate child of defendants Romeo Zuñiga and Dominga Galicia. The complainant thereupon filed the complaint by which this action was initiated.

Upon the above facts, we find that the judgment appealed from cannot be sustained. The evidence, in our opinion, does not show beyond reasonable doubt the guilt of the appellants of the crime charged. The crime of concubinage, defined and penalized in Article 334 of the Revised Penal Code, may be committed in three ways: (1) by keeping a mistress in the conjugal dwelling; (2) by having sexual intercourse with a woman who is not his wife under scandalous circumstances; and (3) by cohabiting with a woman who is not his wife in any other place. It is admitted that appellant Romeo Zuñiga did not keep his alleged mistress Dominga Galicia in the conjugal dwelling, nor had sexual intercourse with said woman under scandalous circumstances. The claim of the prosecution is that the appellants cohabited with each other in a place other than the conjugal dwelling. The charge at bar, therefore, might fall, if at all, under the third way, i.e., by cohabiting with a woman who is not his wife in any other place.

The word "cohabit", as used in the above-mentioned codal provision, has a definite meaning. The Supreme Court has held in a number of cases that said term means "to dwell together, in the manner of husband and wife, for some period of time, as distinguished from occasional, transient interviews for unlawful intercourse." People vs. Pitoc, 43 Phil., 758; Ocampo vs. People, 72 Phil., 268. The question, therefore, whether or not an association for illicit intercourse constitutes cohabitation within the meaning of the law is in every case a question of fact. If a married man's conduct with a woman who is not his wife was not confined to occasional, transient interviews for carnal intercourse but is carried on in the manner of husband and wife and for some period of time, then such association is sufficient to constitute cohabitation within the meaning of the law. Proof of actual sexual intercourse is not necessary. Otherwise, there is no cohabitation.

As we analyze the evidence, we find that there is no proof that appellant Romeo Zuñiga had associated himself with his co-appellant Dominga Galicia in such manner as to constitute cohabitation within the meaning of the law. He might have had interviews for unlawful intercourse with his co-appellant Dominga Galicia during the period referred to in the testimony of the offended party. This is not improbable, taking into account the fact that they had lived together as husband and wife without the benefit of marriage for years prior to Romeo Zuñiga's marriage to the complainant and that out of that union were born several children. It is likewise not improbable that the baby Debra Jennifer Zuñiga, who was born on January 17, 1952, is the child of the

appellants. It may also be considered as proved that on June 25, 1956, the complainant and the witness Gonzalo Reducto found Romeo Zuñiga and Dominga Galicia together in house No. 480 (Int. 30) Lealtad Street, Sampaloc, Manila, the former being in his underwear and the latter wearing a house dress taking care of a small child, and that on that occasion Romeo Zuñiga refused to have a talk with the complainant and told her to go home, although this fact is denied by the witnesses for the defense who testified that on that date appellant Dominga Galicia was no longer living in that house. But such facts do not sufficiently prove cohabitation as contemplated in the law. There is in the record no evidence that shows that appellants Romeo Zuñiga and Dominga Galicia dwelled together in that house in the manner of husband and wife for some period of time. Romeo Zuñiga's failure to take the witness stand to contradict the statement of the complainant and the witness Gonzalo Reducto on the point, and the former's claim that he and his co-appellant were living together in that house raise no unfavorable inference against said appellant. Under the law, the neglect or refusal of an accused to be a witness shall not in any manner prejudice or be used against him. Section 1, paragraph (c), Rule 111, Rules of Court. Moreover, it will be remembered that according to the complainant herself, from September 20, 1949, to May 1956, appellant Romeo Zuñiga had been living with her in their conjugal home, first in 1176 Pennsylvania Street, Manila, and later in Project 4, Quezon City, and the former's statement that from May 1956 he has been living with relatives in Quezon City is not contradicted.

Upon the evidence of record, therefore, we entertain serious doubts as to the guilt of the appellants of the crime charged. It does not clearly establish that appellant Romeo Zuñiga cohabited with his co-appellant Dominga Galicia in any place other than the conjugal dwelling, or that he had sexual intercourse with her under scandalous circumstances, within the meaning of Article 334 of the Revised Penal Code. They are entitled to the benefits of these doubts. Consequently, the judgment appealed from convicting said appellants of the crime of concubinage is reversed, and another is hereby entered acquitting them of said crime, with the costs in both instances *de oficio*.

IT IS SO ORDERED.

Sanchez and *Angeles, JJ.*, concur.
Judgment Reversed.

[No. 16943-R. June 25, 1960]

THE WORLD-WIDE INSURANCE & SURETY CO., INC., plaintiff and appellee, *vs.* DANIEL TAN, ET AL., defendants; TAN TING, defendant and appellant.

CONTRACTS; INDEMNITY AGREEMENT, NATURE; LIABILITY OF CO-MAKER.—An indemnity agreement being a contract of suretyship and not merely of guaranty, the liability of a co-maker thereof is solidary, and, therefore, when sued on such agreement, he cannot claim the benefit of excussion under Article 2064 of the Civil Code.

APPEAL from a judgment of the Court of First Instance of Manila. Amparo, *J.*

The facts are stated in the opinion of the Court.

Buenaventura Evangelista, for defendant and appellant.
Villareal & Amacio, for plaintiff and appellee.

CASTRO, *J.:*

This is an appeal by the defendant Tan Ting from a decision of the Court of First Instance of Manila, ordering him to pay to the plaintiff World-Wide Insurance & Surety Co., Inc., the sum of ₱2,915.50, with interest at 12% per annum from June 3, 1954, the further sum of ₱437.32 as attorney's fees, and the costs of this suit.

On January 27, 1951, the Priscila Estate, Inc. leased to Daniel Tan the ground floor of the Priscila building for a term of two years at a monthly rental of ₱1,100. The lease agreement required Daniel Tan to "post a surety bond in the amount of ₱3,300.00 in favor of the lessor to guarantee his faithful compliance with all the terms and conditions of this contract". Accordingly, he as principal, and the World-Wide Insurance & Surety Co., Inc. as surety, executed a surety bond in the sum of ₱3,300 in favor of the Priscila Estate, Inc. On the same date, January 27, 1951, Daniel Tan, Tan Ting and Corazon Misa executed an indemnity agreement in favor of the World-Wide Insurance & Surety Co., Inc. whereby they jointly and severally bound themselves to indemnify the latter for all damages and expenses of whatever kind and nature which it might sustain or incur in consideration of the aforesaid surety bond.

Because Daniel Tan failed to pay the rentals for the months of August, September, October, November and December, 1951, the Priscila Estate, Inc. sued him together with the World-Wide Insurance & Surety Co., Inc. (civil case 15532). Daniel Tan failed to file his answer, and he was declared in default. Judgment was then rendered ordering him and the World-Wide Insurance & Surety Co., Inc. to pay, jointly and severally, the Priscila Estate, Inc. the sum of ₱3,300, plus legal interest.

The present action is instituted by the World-Wide Insurance & Surety Co., Inc. against the defendants Daniel Tan, Tan Ting and Corazon Misa, to recover the sum of ₱2,915.50 which under the indemnity agreement it paid to the Priscila Estate, Inc., plus 12% interest and 15% attorney's fees. Daniel Tan and Corazon Misa were not served with summons as they could not be located at their stated addresses and their whereabouts were unknown. The present appeal concerns Tan Ting alone.

In this appeal, Tan Ting makes the following assignment of errors:

"1. The lower court erred in denying appellant's motion for reconsideration and new trial dated December 19, 1955;

"2. The lower court erred in its decision dated December 5, 1955 declaring appellant jointly and severally liable instead of jointly only with his co-defendants to the herein appellee; and

"3. The lower court erred in not declaring appellant exempt from any liability to the herein appellee."

In his motion for reconsideration and new trial, the appellant alleged that his failure to appear and to present evidence on December 5, 1955 was due to excusable neglect, because on that date he was confined at the Quezon Institute. He presented a medical certificate in support of his averment.

It would seem to appear from the foregoing that the appellant's motion was in order and that the lower court should have granted it, considering that under sec. 6, Rule 31, Rules of Court, "a motion to postpone a trial on the ground of illness of a party may be granted if it appears upon affidavit that the presence of such party at the trial is indispensable and that the character of his illness is such as to render his non-attendance excusable". It is evident from the language of the cited rule, however, that even upon motions supported by affidavits or sworn medical certificates, postponements rest almost entirely within the discretion of the court.

We note that the court *a quo* has been more than liberal in granting the appellant's motions for postponement: on April 30, 1953, due to appellant's "illness and confinement at the Quezon Institute", the case was postponed "until further assignment"; on January 4, 1955, because the appellant "has not yet engaged the services of a lawyer", the court postponed the trial to April 28, 1955; on April 28, 1955 upon appellant's motion on the ground of "illness", the court postponed the trial of July 27, 1955; on July 27, 1955, the court postponed the trial to September 30, 1955; on September 30, 1955, as Atty. Jose C. Zulueta's services "were engated only yesterday and that he did not have time to study the case", the court granted postponement to December 5, 1955, with the warning that "on that date, with or without the presence of Tan Ting or his counsel,

the trial will proceed and the case will be deemed submitted for decision". This admonition was also contained in the court's order of January 4, 1955 and April 28, 1955. It is too obvious that the court has accorded the appellant sufficient time and opportunity to appear and present his defense. Indeed on April 28, 1955, after considering the nature of appellant's malady and the uncertainty of his appearance, the court ordered his deposition to be taken, but instead of submitting one on December 5, 1955, the appellant again moved for postponement. To say now that he has cause for complaint is to sanction caprice in legal proceedings. While it is the duty of a court to protect the interest of a party-litigant, it cannot do so to the detriment of the opposing party-litigant. Thus:

"The record reveals that the trial of the case was postponed five times at the instance of appellants themselves, and for this reason the trial was delayed for more than one year and three months. In granting these several postponements, the trial judge was overliberal already, and to have allowed another postponement would have been to jeopardize plaintiff's interest. Obviously, courts cannot unduly protect the interest of one party to the detriment of the other. Already there are complaints regarding delays in the disposition of our cases. x x x How to eliminate, at least minimize, these delays is as much our concern and acts of trial courts conducive towards this purposeful end will be encouraged by appellate courts." (Rosario *vs.* de Leon, CA–G.R. 6495–R, April 25, 1941, 40 O.G. 763–764).

Upon the main question in issue, we gather from the appellant's brief that he is an ignorant Chinaman who is not well-versed in the English language, and that when he signed the indemnity agreement he was assured that his liability would only be joint.

We have examined the record and have found no proof to sustain the appellant's contention that he is ignorant. That he is not well-versed in the English language is belied by the answer he filed on June 19, 1953, personally signed by him, which is in English. As to the nature and extent of his liability, it is enough to observe that the indemnity agreement clearly states his joint and several liability with his co-makers Daniel Tan and Corazon Misa. As aptly stated by the trial Court,

"The indemnity agreement executed by Tan Ting, Daniel Tan and Corazon Misa clearly and unmistakably states that their liability is joint and several, and that Tan Ting's belief that his obligation is joint only did not alter the nature of his liability."

The appellant further contends that the indemnity agreement is not a surety contract but only a guaranty; he should therefore be given the benefit of excussion under article 2064 of the new Civil Code. Suffice it to say, in this connection, that the appellant is not a mere guarantor of Daniel Tan as principal debtor of the Priscila Estate, Inc., but is a surety of Daniel Tan as co-maker of the

indemnity agreement. Clearly he is not entitled to the benefit of excussion, the present action being based on the indemnity agreement.

Appellant has belabored extensively his contention, citing article 2079 of the new Civil Code, that because the Priscila Estate, Inc. has granted an extension of time to Daniel Tan for the payment of a month's rent of ₱1,100, without his consent in writing, he cannot now be held liable inasmuch as he was not a party to the said extension. This argument is of course absurd. Aside from the fact that the indemnity agreement is a suretyship and not a mere guaranty, there is no causal connection between the lease contract between the Priscila Estate, Inc. and Daniel Tan, on the one hand, and the indemnity agreement between the World-Wide Insurance & Surety Co., Inc. and the defendants Daniel Tan, Tan Ting, and Corazon Misa, on the other. The Priscila Estate, Inc. is not a party to this action; neither was the appellant a party in civil case 15532.

The appellant finally maintains that the present action is premature because the World-Wide Insurance & Surety Co., Inc. and Daniel Tan have not yet paid to the principal creditor the amount in question. That the appellee paid to the Priscila Estate, Inc. the sum of ₱2,915.50 on November 2, 1953, is unmistakably evidenced by exhibit E. But even if the record should contain no evidence of such payment, we would nonetheless hold that the appellee's action is not premature and that its complaint states a valid and sufficient cause of action. The indemnity agreement explicitly grants to the appellee the right to recover from the defendants "all sums and amount of money which it or its representatives shall pay or cause to be paid, or become liable to pay". The following pronouncement by the Supreme Court is *apropos:*

"The contention of appellants that the action of appellee is premature or that the complaint fails to state a cause of action because it does not allege that appellee has paid to the bank the balance of their obligation, cannot be sustained. This is belied not only by the allegations of the complaint but also by the agreement entered into between the appellants and the appellee in connection with the surety agreement undertaken by the appellee in favor of the bank. Thus, it appears from the complaint that the renewed promissory note became due and payable on May 27, 1950, without the spouses Aguilar having paid any amount on account in spite of repeated demands, as a consequence of which plaintiff became liable to pay the bank the amount of ₱1,150, plus interest, and that, under the terms of the indemnity agreement signed by the plaintiff and the defendants, the liability of the former as surety became immediately demandable upon the occurrence of the latter's default. And the indemnity agreement, with regard to the maturity of the obligations assumed by defendants, contains the following clause: 'The indemnities will be paid to the Company as soon as demand is received from the Creditor, or as soon as it becomes

liable to make payment of any sum under the terms of the above-mentioned bond, its renewals, extensions, or substitutions, whether the said sum or sums or part thereof, have been actually paid or not.' These allegations speak for themselves. They clearly belie the claim that the complaint fails to state a cause of action for from them it can be clearly deduced that the defendants became liable to the plaintiff from the moment of their default irrespective of the payment of the obligation." (Alto Surety and Insurance Co., Inc. *vs.* Aguilar, G.R. No. L-5625, March 16, 1954; see also Alto Surety Inc. *vs.* Republic Mines, Inc., CA-G.R. 5194-R, Aug. 8, 1951).

ACCORDINGLY, the judgment *a quo* is affirmed *in toto*, with costs against the defendant-appellant.

De Leon and *Makalintal, JJ.*, concur.

Judgment affirmed.

[No. 23903-R. June 21, 1960]

ABELARDO F. VERGARA, plaintiff and appellant, *vs.* JULIANO & CO., INC., ET AL., defendants and appellants.

1. COMMON CARRIERS; CONTRACT OF CARRIAGE; ARTICLES 952 and 366, CODE OF COMMERCE, CONSTRUED.—Article 952 of the Code of Commerce, in relation to Article 366 of the same code, requiring the performance of a condition precedent, governs such cases where the goods are delivered to the consignee or the agent of the shipper in a defective condition but the packages do not show any exterior sign of damage, and does not apply to a case where the goods have not been delivered at all. (See Roldan vs. Lim Ponso, 37 Phil., 285).

2. ID.; ID.; LIABILITY; EXONERATING CIRCUMSTANCES; EVIDENCE.—In the case of loss, destruction or deterioration of goods, the carrier may be absolved of liability if it can show that the goods were lost, destroyed or deteriorated by reason of any of the causes enumerated under Article 1734 of the Civil Code among which is fortuitous event. Under the law, it is the imperative duty of the carrier to prove that the loss or injury was due to some circumstances inconsistent with its liability (Inchausti Co. *vs* Dexter and Unson, 41 Phil., 289), and a court, in an action based on a contract of carriage, need not make an express finding of fault or negligence on the part of the carrier in order to hold it responsible to pay damages sought by the plaintiff (Olegario Brito Sy *vs.* Malate Taxicab and Garage, Inc., G. R. No. L-8937, Nov. 29, 1957).

3. BOARD OF MARINE INQUIRY; NATURE AND POWERS; FINDINGS OF FACT NOT GENERALLY DISTURBED; EXCEPTIONS.—The Board Marine Inquiry of the Bureau of Customs is an administrative body with quasi-judicial powers (Section 1198, Revised Administrative Code). Its findings of fact may not be disturbed by the courts as long as there is substantial evidence to support its decisions and there is no showing that it acted arbitrarily (Villarica *vs.* Hon. M. Garchitorena, CA-G. R. No. 5167, Dec. 29, 1952; Elias Ordiales *vs.* Mariano Yengko, Jr., 54 O. G., No. 5, p. 1416).

4. COMMON CARRIERS; CONTRACT OF CARRIAGE; LIABILITY; FORTUITOUS EVENT AS AN EXONERATING CIRCUMSTANCE.—Fortuitous event as an exonerating circumstance must not only be the proximate cause but also the sole cause of the loss (I Francisco, The Law on Transportation, (1951 Ed.), pp. 66-67, citing 9 Am. Jur. 853-854.)

5. ID.; ID.; ID.; ID.; ABANDONMENT OF VESSEL AND FRREIGHT; LIMITED LIABILITY OF SHIPOWNER; ART. 587, CODE OF COMMERCE.—The exemption provided under Article 587 of the Code of Commerce (to the effect that the agent may exempt himself from civil liability for indemnities in favor of third persons arising from the conduct of the captain in the care of the goods which the vessel carried, by abandoning the vessel and its freight) is premised on the circumstance that the loss or injury occurred by reason of the conduct of the captain of the ship. While this doctrine of limited liability will apply in actions based on the negligence of the captain only, it will not apply to cases where the shipowner or agent is sued because he himself is directly guilty of fault or negligence so that abandonment of the vessel will not absolve him of liability (Manila Steamship Co., Inc., *vs.* Insa Abdulhaman and Lim Hong To, G. R. No. L-9534, Sept. 29, 1956).

APPEAL from a judgment of the Court of First Instance of Baguio. Enriquez, *J.*

The facts are stated in the opinion of the Court.

Cosalan, Suanding, Ronquillo & Diaz, for plaintiff and appellant.

Clemente M. Aliño, for defendant and appellee.

ANGELES, *J.:*

This action was commenced in the Court of First Instance of Baguio City on April 13, 1957 against Juliano & Company, Inc., its president and general manager, and the captain of the M/S Tawi-tawi "J" to recover damages arising out of a breach of a contract of carriage. Plaintiff alleged that for failure of the defendants to exercise that extraordinary diligence required of common carriers his cargoes sank together with the M/S Tawi-tawi "J" on August 28, 1954, resulting in losses and damages. He prayed for ₱22,357.75 actual damages, ₱2,500 attorney's fees, ₱20,000.00 consequential damages, and moral damages in an amount to be determined by the court.

The defendants set up the defenses that the cause of action of the plaintiff did not accrue because he failed to file the proper marine protests as required by Article 952 of the Code of Commerce; that the plaintiff cannot recover damages because the loss occurred by reason of a fortuitous event; and that defendants' liability, assuming there is any, is limited by the value of the vessel which perished in the sea.

From the deposition of the plaintiff, who at the time of the trial was in the United States, and the testimonies of his witnesses, the following facts appear: Prior to August, 1954, plaintiff, a doctor of medicine, was in Moncayo, Compostela, Davao practising his profession. In his place he had an eight-bed dispensary and clinic where patients were confined for treatment and a "household remedy store" with medicines. Around the middle of August, 1954, plaintiff made preparations to move his clinic to Margosatubig, Zamboanga del Sur. He packed everything he had, medicines, medical instruments and books, funiture and personal belongings, and transported them by truck to Cotabato from which they were loaded on board the Tawi-tawi "J" for shipment to Margosatubig via Pagadian. By virtue of the contract of carriage entered into between plaintiff and Juliano & Company, Inc., the former paid ₱55.09 for the shipment of the cargoes (Exhibit A–13) and ₱40.00 for fares of his four helpers and himself (Exhibit A–14). The cargoes were declared in the bill of lading as worth ₱3,000.00 (Exh. A–3). Plaintiff carried in his person cash in the amount of ₱5,200.00 of which

sum ₱5,000.00 was withdrawn by him from the Bank of the Philippine Islands, Davao branch, on August 26, 1954 (Exhibit C).

On August 27, 1954, at around 7:00 p.m., the M/S Tawi-tawi set sail for Pagadian under the command of Patron Delfin Maturan, carrying around 100 passengers, 15 crew members and 90 packages of medicines and medical equipment. With typhoon "Ida" raging 300 miles east of Basco, there was in southern Mindanao moderate southwest winds. At past midnight, plaintiff was awakened by the commotion of passengers reaching for life-savers. The boat tilted to the right and to the left and the lights went out. The passengers were panicked. Women and children shrieked and screamed. As the boat began to sink, the passengers left the boat. Plaintiff held on to a gasoline drum and after floating thereon for about an hour he managed to join his helpers on a detached roof of the boat where he was to float with other survivors for 16 hours. At around noon of August 28, 1954, the chief engineer of the boat, joining plaintiff on the roof, told him that the cracked portion below the engine room which had existed prior to the sailing gave way to the lashing of the waves as a result of which water poured in inside the vessel.

As to the occurrence of the incident in question, only Delfin Maturan testified for the defense. He declared that he was the captain of the ill-fated vessel which was a former submarine chaser, made of wood, with a gross tonnage of 128 tons. When the boat left Cotabato for Pagadian on August 27, 1954, the weather was fair. At about 11:35 o'clock p.m., the wind began to blow strongly and heavy rain fell and big waves swept the sea. The barometer reading dropped abruptly which was an indication of an impending bad weather. In spite of big waves lashing against his boat, he proceeded to his course because Pagadian was already very near. At 1:30 o'clock a.m., August 28, 1954, he heard a commotion down below the ship. The officer on guard duty and the engineer told him that plenty of water was coming in under the engine and that nothing could remedy the situation because the water in the boat was already deep and the leak was underneath the engine. He changed his course and headed towards the shore, and when the engines stopped on account of the water inside the boat he ordered passengers and crew members to abandon ship. More than half-way between Cotabato and Pagadian the boat sank.

According to the witness, he did not find any defect in the M/S Tawi-tawi when it was drydocked in June, 1954.

On cross-examination, the witness declared that due to the sinking of the M/S Tawi-tawi his license was sus-

pended by the Board of Marine Inquiry. He is not a graduate of any marine school. His highest educational attainment was fourth grade. His knowedge about the construction of a ship is limited. The boat was last inspected by a representative of the government in 1952. At the time of the disaster the ship had only two engineers. He knew that under section 1203 of the Revised Administrative Code it should have three enginers but he could not get a third engineer. The capacity of the M/S Tawitawi was forty-five passengers. When it sailed it had seventy passengers on board. But the load manifest stated forty passengers only. The officers on the ship inspected the number of passengers in the boat when it was already out in the sea and only then did they discover that the boat was overloaded. He did not know at the time when he sailed the ship from Cotabato that typhoon "Ida" was 300 miles east of Basco. Neither did he bother to verify from any weather bureau station whether or not a storm was coming. The ship had no radio equipment.

After trial, the court rendered judgment ordering the defendants to pay plaintiff jointly and severally the sum of ₱12,805.09 with legal interest from April 30, 1957, ₱2,000.00 moral damages and ₱1,000.00 attorney's fees, plus costs. The defendants appealed from the decision. The plaintiff also interposed an appeal, contending that the lower court erred in not awarding moderate or temperate and exemplary damages and in limiting the award of moral damages to ₱2,000.00 only.

The first contention of the defendants-appellants is that the cause of action of the plaintiff did not accrue because he failed to file the proper protest or reservation about the loss of his cargoes in accordance with the last paragraph of clause No. 2 of article 952 of the Code of Commerce. The provision of law referred to reads as follows:

"Art. 952. The following shall prescribed after one year:

* * * * * * *

2. The actions relating to the delivery of the cargo in maritime or land transportation or to the indemnity for delays and damages suffered by the goods transported, the period of the prescription to be counted from the date of delivery of the cargo at the place of destination, or from the day on which it should have been delivered according to the conditions of its transportation.

The actions for damages or defaults cannot be brought if *at the time of delivery of the respective shipments or* within the 24 hours following, when the damages which do not appear on the exterior of the packages received are in question, the proper protest or reservations should not have been made." (*underscoring* supplied)

We believe that the contention of the defendants-appellants is without merit. Article 952 of the Code of Commerce, in relation to article 366 of the same code, requiring

the performance of a condition precedent, governs such cases where the goods are delivered to the consignee or the agent of the shipper in a defective condition but the packages do not show any exterior sign of damage. "At the time of delivery of the respective shipments or within the 24 hours following", the proper protest or reservations should be made, otherwise there will be a failure of accrual of a cause of action. It does not apply to the case at bar where the goods have not been delivered at all. (See Roldan *vs.* Lim Ponso, 37 Phil., 285.)

The second contention relates to the cause of the sinking of the M/S Tawi-tawi "J" and of the consequent loss of the cargoes of the plaintiff. Defendants-appellants maintain that the proximate cause was a fortuitous event; plaintiff insists that it was the defendants' negligence.

From the nature of their business and for reasons of public policy, common carriers are bound to observe extraordinary diligence in the vigilance over the goods and to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person, with due regard for all the circumstances (Articles 1733 and 1755 of the Civil Code). In case of death of or injury to passengers or loss, destruction or deterioration of the goods, common carriers are presumed to have been at fault or to have acted negligenctly (Articles 1735 and 1756, Ibid). The presumption is disputable, and it may be rebutted by showing that the carrier observed extraordinary diligence. In the case of loss, destruction or deterioration of goods, the carrier may also be absolved of liability if it can show that the goods were lost, destroyed or deteriorated by reason of any of the causes enumerated under article 1734 of the Civil Code among which is fortuitous event. Under the law, it is the imperative duty of the carrier to prove that the loss or injury was due to some circumstances inconsistent with its liability (Inchausti Co. *vs.* Dexter and Unson, 41 Phil., 289). The court in an action based on a contract of carriage, like the present case, need not make an express finding of fault or negligence on the part of the carrier in order to hold it responsible to pay damages sought by the plaintiff (Olegario Brito Sy *vs.* Malate Taxicab and Garage, Inc., G. R. No. L–8937, Nov. 29, 1957). Unless the carrier can prove the existence of any of the exonerating circumstances or observance of extraordinary diligence, the court will adjudge to pay damages.

In the instance case, it is undisputed that the plaintiff who entered into a contract of carriage with the defendants lost his cargoes. The pertinent inquiry, therefore, is not whether the plaintiff has adduced sufficient evidence to show the cause of the loss but whether the defendants

have presented enough proofs to overcome the presumption that they have been at fault or that they have acted negligently in the performance of their duty. Examining the evidence of the defendants carefully, we find that not only did they fail to rebut the presumption of fault or negligence but their very proofs show fault and negligence on their part. Unmistakable signs of defendants' culpability and negligence abound in the record. Nothwithstanding knowledge by the captain that the month of August was within the typhoon season in the Philippines, he failed to verify before sailing from competent authorities like the weather bureau whether or not a typhoon was approaching. The M/S Tawi-tawi was underhanded and ill-equipped. It had only two engineers, in violation of the Revised Administrative Code which requires that it should have three. There were no radio equipment on board and other means by which to communicate with other vessels or with ports. The captain had scant knowledge of the rules and regulations of navigation and of ship's construction. The vessel was overloaded with passangers. And it had been two years since the ship was last inspected by an agent of the government.

The defendants have endeavored to show that the proximate cause of the loss was a fortuitous event. But from the admission of the chief engineer to the plaintiff, which was admitted by the court *a quo* as part of the *res gestae,* it appears that the reason for the sinking of the ship was the giving way of the wooden plank underneath the engine which even prior to the voyage in question already had a crack. This admission was corroborated to a certain extent by the captain of the ship, Delfin Maturan, when he declared that the water entered the boat through the engine room. Moreover, as found by the Special Board of Marine Inquiry of Zamboanga:

"The Board attributes the sinking of the 'Tawi-Tawi J'—(1) to the action of the wind and waves, which buffeted the sides of the boat, thus causing the side plankings of the hull to give way. On August 27 and 28, 1954 the days of the accident there was the typhoon 'Ida' reported about 300 miles SE of Basco. According to the report of the Weather Bureau Station in Zamboanga City the state of the sea in Southern Mindanao waters during these two days was slight to moderate or uncertain, and this was corroborated by Fabian Celicious, one of the passengers on the 'Tawi-Tawi J' during the voyage and by Captain Julio Mindoro of the 'Princess of Zamboanga' which was sailing from Pagadian to Cotabato during those two days, and (2) the mishap was also due to the evident unseaworthiness of the boat itself. The boat had not undergone a thorough and technical inspection by the Customs Hulls and Boilers Inspector for the last two years. Her last partial inspection was on July 25, 1952. Since then, no Customs Hulls and Boilers Inspector came to Mindanao from Manila. Only the Patron of the boat who has no adequate knowledge about ship's construction made cursory inspections of the hull from time to time when the engines

and propellers of ship were undergoing repairs. Evidently some weak parts of the hull had been overlooked so that with a little pressure caused by the moderate or rough sea those weak hull plankings were easily knocked off. Furthermore, the plankings that gave way were (according to the Captain and Engineers) only about one fathom long. Naturally, when one end was slightly loosened, the pressure of the water caused by the speed of the boat forced the plankings to open up and fly off from the ribs. The plankings were evidently so weak that when the waves battered the sides of the ship its plankings at both sides snapped off simultaneously. The state of the sea, i.e. slight to moderate, with the wind blowing at a velocity of from 3 to 4½ knots an hour, was not considered strong enough to break the sides of the ship if it (the ship) was seaworthy. At that time the boat was pitching and was not even taking in water on its deck." (Exhibit A–7).

And as confirmed by the Commissioner of Customs of Manila, "it is evident that the sinking of the M/S 'Tawi-Tawi was due to her unseaworthy condition x x." (Exhibit A–8).

The third contention is that Exhibits A–7 and A–8 are worthless because they are hearsay evidence. Defendants-appellants argue that they were deprived of the opportunity to cross-examine the signers of the two exhibits. In support of their arguments they cite the ruling of the Supreme Court in the case of Ortiz *vs.* Compania Maritima, 7 Phil., 507, the pertinent portion of which is as follows:

"It appeared that after the collision an investigation was made as to the cause thereof and the responsibility therefor by a board composed of officers of the custom service in Manila and the captains of vessels sailing in these waters. This report was approved by the Insular Collector of Customs and at the time of the trial of this case the report of the board and the approval of the Insular Collector were offered in evidence by the plaintiff to prove the negligence of the defendant. The court refused to admit this evidence, to which refusal the plaintiff excepted. This ruling of the court in rejecting same was correct. There was nothing to show what evidence the board had before it when it reached its conclusions; there was nothing to show that it made its finding upon the same evidence which was presented in this case.

And even if the evidence had been the same we do not see how, in the absence of a declaratory statute, the report of the board could be considered as competent evidence to prove the negligence of the defendant. In the absence of such statutory provisions it was no more than the opinion of several persons who had examined into the matter but who were not called as witnesses, were not sworn, and whom the defendant did not have opportunity of cross-examining."

In our opinion, the ruling in the Ortiz case cannot apply to the case at bar. There was nothing to show what evidence the board had before it when it reached its conclusions in the Ortiz case. On the other hand, the Board of Inquiry in the present case based its findings and recommendations on evidence adduced to it during the investigation. Delfin Maturan candidly admitted that he was investigated by the Board of Marine Inquiry after the sinking of the M/S

Tawi-tawi (t.s.n., pp. 35–36). Moreover, the present Board is by statute clothed with quasi-judicial powers. It is an administrative body with powers and functions defined.

"Marine investigation and suspension or revocation of marine certificate. There shall be maintained in the Bureau of Customs at Manila a Board of Marine Inquiry to consist of five members, to wit: The Surveyor of the Port as chairman ex-officio, two master mariners and two chief engineers of the Philippine merchant marine, who shall be appointed by the Secretary of Finance. * * * Such board shall have the power to investigate marine accidents and professional conduct of marine officers, giving the party affected an opportunity to be heard in his defense. The decision of the Commissioner of Customs based on the findings and recommendations of the board, reprimanding a licensed marine officer or suspending or revoking any marine certificate on account of professional misconduct, intemperate habits, negligence or incapacity shall be final, unless, within thirty days after its promulgation, an appeal is perfected and field in the Office of the Secretary of Finance, who may confirm, revoke, or modify said decision.

* * *

The Commissioner of Customs may, with the approval of the Secretary of Finance, authorize collectors of customs to appoint boards for the purpose of investigating marine accidents or charges preferred against marine officers in their respective districts. The proceeding of such investigation, together with the findings and recommendations of said board, shall be submitted, through the Commissioner of Customs, to the Board of Marine Inquiry, Manila, for final review and recommendation. * * *" (Section 1198, Revised Administrative Code).

whose findings of fact may not be disturbed by the courts as long as there is substantial evidence to support its decisions and there is no showing that it acted arbitrarily. (Villarica *vs.* Hon. M. Garchitorena, CA–G. R. No. 5167, Dec. 29, 1952; Elias Ordiales *vs.* Mariano Yenko, Jr., 50 O. G., No. 5, p. 1416.)

Furthermore, it does not avail the defendants any help to assail the findings of the Board of Special Inquiry of Zamboanga and of the Commissioner of Customs of Manila. Said findings were presented by the plaintiff in evidence to prove that the M/S Tawi-tawi was not seaworthy and that the defendants were negligent. This was not at all necessary, for as we have said elsewhere above the fault or negligence of the carrier being presumed it need not be proved. Finally, even disregarding the findings of the two administrative bodies, the unseaworthiness of the defendants' vessel is clearly demonstrated by the facts that it did not have a sufficient and competent complement of officers and crew members; a continued maintenance of the vessel's fitness for voyage was wanting; it was ill-equipped; and it was overloaded. These facts were testified to by Delfin Maturan, lone witness of the defendants as to the occurrence of the incident. By the established jurisprudence the ship was not seaworthy.

"Generally, seaworthiness is that strength, durability and engineering skill made a part of a ship's construction and continued maintenance, together with a conpetent and sufficient crew, which would withstand the vicissitudes and dangers of the elements which might reasonably be expected or encountered during her voyage without loss or damage to her particular cargo. (Standard Vacuum Oil Co. V. Luzon Stevedoring Co., Inc., G. R. No. L–5203, April 18, 1956, citing cases.)

"The requirement of seaworthiness at the beginning of a voyage includes not only seaworthiness in hull and equipment, but also in the voyage of the cargo. The vessel is unseaworthy where by the manner in which she is loaded or stowed she is rendered unfit to encounter the perils of the sea or ordinary peril of navigation reasonably to be anticipated; and this rule has been held not limited in its application to negligence or improper stowage which makes the ship unseaworthy as a ship but to extend to stowage as it affects the safety of the cargo itself. Furthermore, the vessel may be unseaworthy, if she is improperly ballasted with reference to her load, or has the wrong kind of ballast, for her cargo, or if she is overloaded or improperly loaded. (80 C. J. S., pp. 999–1000.)

"In order that a vessel may be seaworthy, it must be staunch and fit to meet the perils of the sea, and, likewise, a vessel to be considered seaworthy must have proper equipment." (80 C. J. S., pp. 703–704.)

"It is a requisite to the fulfillment of the obligation of the owner to keep his vessel seaworthy during the voyage that she shall be furnished with an adequate number of persons of competent skill and ability to navigate her. The owner must supply a competent master and crew, adequate in number for the voyage with respect to its length and other particulars." (pp. 704–705, Ibid.)

From the evidence, it appears clearly that the proximate cause of the loss of the plaintiff's cargoes was the defendants' fault or negligence. They put out to sea a ship that was not seaworthy. Assuming for the sake of argument that typhoon "Ida" contributed to the loss, still defendants are liable because fortuitous event as an exonerating circumstance must not only be the proximate cause but also the sole cause of the loss.

"Even though the immediate or proximate cause of a loss in any given instance may be what is termed the act of God, nevertheless, if the negligence of the carrier mingles with it as an active and cooperative cause, the carrier is still responsible: in other words, where the negligence of the carrier concurs in, and contribute to, the loss or injury, the carrier is not exempt from liability. The act of God, to excuse the carrier must not only be the proximate cause but also the sole cause of the loss. * * * Thus a carrier which operates on an unseaworthy vessel is not excused by an act of God, which would not have harmed a seaworthy one. (I Francisco, The Law on Transportation, (1951 Ed.), pp. 66–67, citing 9 Am. Jur. 853–854.)

It is finally contended that by virtue of the doctrine of limited liability of shipowners, under which the owner or agent may exempt himself from responsibility by abandoning the vessel with all her equipment and the freight he may have earned during the voyage, the herein defendants cannot be held liable for damages.

The contention is devoid of merit. The doctrine invoked by the defendants is embodied in article 587 of the Code of Commerce which reads as follows:

"The agent shall also be civilly liable for the indemnities in favor of third persons which arises from the conduct of the captain in the care of the goods which the vessel carried; but he may exempt himself therefrom by abandoning the vessel with all her equipments and the freight he may have earned during the voyage."

It will be noticed that the exemption is premised on the circumstance that the loss or injury occurred by reason of the conduct of the captain of the ship. The doctrine will apply in actions based on the negligence of the captain only. But when, as in the present case, the shipowner or agent is sued because he himself is directly guilty of fault or negligence, abandonment of the vessel will not absolve them of liability.

"The international rule is to the effiect that the right of abandonment of vessel, as a legal limitation of a shipowner's liability, does not apply to cases where the injury or the average is due to the shipowner's own fault. (Farina, Derecho Commercial Maritima, Vol. I, pp. 122–123), on the authority of judicial precedents from various nations, sets the rule to be as follows:

> 'Esta generalmente admitido que el proprietario del buque no tiene derecho a la limitacion legal de responsabilidad si los daños o averias que dan origen a la limitacion provienen de sus propias culpas. El Convenie de Bruselas de 25 de agosto de 1924 tambien invalida la limitacion en el caso de culpa personal en los accidentes o averia sobrevenidos, (art. 2).'

To the same effect, a noted French author states:

"La limitacion de la responsabilidad maritima he sido admitida para proteger a los armadores contra los actos abusivos de sus encargados y no dejar su patrimonio entero a la discrecion del personal de sus buques, porque este personal cumple sus obligaciones en condiciones especiales; pero los armadores no tienen por sobre los demas derecho a ser amparados contra ellos mismos ni a ser protegidos contra sus propios actos." (Danjon, Derecho Maritimo, Vol. 2, p. 332. (Manila Steamship Co., Inc. *vs.* Insa Abdulhaman and Lim Hong To, G. R. No. L–9534, Sept. 29, 1956.)

We now come to the appeal interposed by the plaintiff-appellant. Under the first error, it is contended that the lower court erred in not awarding moderate or temperate damages for the loss of the earning capacity of the plaintiff.

It is our considered opinion that the lower court did not commit error in this regard. Those seeking to recoup damages must establish their pecuniary loss by satisfactory proof (Manzanares v. Loreta, 38 Phil., 821). The loss of earning capacity is in the nature of *lucro cessante*. It requires certain criteria by which to estimate the amount with the certainty on which the adjudciation of courts should be based, which in the present case are wanting.

The testimony of the plaintiff on which the claim is based is as follows:

"Immediately after the sinking of the Tawi-Tawi J on or about August 28, 1954, I did not practise my profession for around eight months. Then I started my practice at Margosatubig, Zamboanga del Sur for about a year. Since the income was so low, I moved to Malangas, Zamboanga del Sur. After a year's practice there, the income was also poor. I got discoruraged and decided to quit my private practice for a while and came over to the United States for further training in my profession."

Various objections there are to the evidence presented by the plaintiff. In the first place, the fact that he did not practise his profession for around eight months bars him from recovering supposed lost earnings. He could have minimized his damages had he practised his profession.

"Notwithstanding that the creditor has suffered damages by reason of a breach of contract, no liability can be enforced when he did nothing to minimize them, being in a position so to do." (De Castelvi *vs.* Compania General de Tabacos, 49 Phil., 998.)

Secondly, his admission that the income was so low in the places wherever he practised his calling afterwards indicate that the supposed variations between his income before and after the disaster may be attributed to the circumstances of time and place or perhaps, as impliedly admitted by him, to his inadequacy of training rather than to the loss of his medical equipment. This makes loss of earnings or profits rather speculative. Thirdly, he failed to prove his usual earnings, if any, before the incident happened, and his income after the disaster, thereby depriving the court of any criterion by which to calculate his damages.

Plaintiff insinuates that the failure of proof of his alleged lost earning will not serve as an obstacle to an award of damages because temperate or moderate damages may be granted. Evidently, plaintiff confuses failure to prove damages with impossibility or difficulty of determining with certainty the amount of loss in view of the nature of the case. Article 2224 of the Civil Code provides, "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." In the plaintiff's case, it is not an instance where the court finds some pecuniary loss suffered but its amount cannot from the nature of the case be proved with certainty. It is a case where the party seeking damages failed to prove his loss. In the case of the plaintiff, it is the element of personal expertness which is the essential and dominant factor and the fundamental cause of the income, the instrument and similar collateral necessaries being only incidental to the individual

capacity. His income stands on the same basis as wages or salary and may be shown, and yet the plaintiff completely failed to adduce evidence to prove it.

Under the second error the plaintiff claims exemplary damages, contending that the defendants acted in a wanton and reckless manner.

The law requires common carriers to observe extraordinary diligence in the performance of their duty. Their obligation to the public calls for the utmost diligence of very cautious persons with due regard for all circumstances and concomitant to their assumption of the public trust is the commitment that they would employ only efficient and competent personnel and good and reliable equipment. Where, as in the present case, the carrier put out to sea a vessel that is not seaworthy, one that is ill-equipped and manned by officers who are not competent, and overloaded in with cargoes and passengers, in conscious disregard of the rights of others and reckless indifference to consequences, we believe that its acts are characterized by wantonness, and a need for imposing exemplary damages arises to warn and deter others similarly situated to desist from flagrant violation of the regulations which is the frequent cause of the over increasing mishaps and accidents. Considering the circumstances of the case, it is our opinion that the sum of ₱5,000.00, as exemplary damages, would be commensurate.

Moral damages in the sum of ₱2,000.00 awarded by the lower court to the plaintiff is sufficient under the premises. Its basis is the evidence that the plaintiff, because of the disaster, suffered mental anguish and anxiety and fear grips his being everytime the accident occurs to his mind.

WHEREFORE, with the modification that the defendants are hereby ordered to pay the plaintiff jointly and severally the sum of ₱5,000.00 by way of exemplary damages in addition to the same awarded to him by the lower court, the judgment appealed from is affirmed in all other respects, with costs against the defendants-appellants.

IT IS SO ORDERED.

Natividad and *Sanchez, JJ.*, concur.

Judgment modified.

[No. 19287-R. June 24, 1960]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MANUEL JUAREZ, accused and appellant.

1. CRIMINAL LAW; EVIDENCE; UNEXPLAINED MOTIVE OF ACCUSER.—Failure of an accused to conceive of any plausible reason why he is accused by complainant is not necessarily an indication that he is guilty, for the latter's motive might have existed only in his mind and has not been divulged to the former or to any other person.
2. ID.; ID.; OLD AGE OF WITNESS.—The fact that a person has reached the "twilight of his life" is not always a guaranty that he would tell the truth. It is also quite common that advanced age makes a person mentally dull and completely hazy about things which have happened to him and at times it weakens his resistance to outside influence.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Arellano, *J.*

The facts are stated in the opinion of the Court.

Andres G. Fantone, for accused and appellant.

Assistant Solicitor General Jose P. Alejandro and *Solicitor Hector C. Fule,* for plaintiff and appellee.

LANTING, *J.:*

Appellant Manuel Juarez was charged before the CFI of Negros Occidental with having, through deceit and false representation that he possessed power and influence to acquire a duly licensed firearm, succeeded in getting ₱400.00 from complainant Alberto Celeste after which he delivered to the latter a revolver with its supposed corresponding license which appellant knew full well not to be a permit or license issued by the corresponding authority, and once in possession of said amount, misappropriated and converted it to his personal use and benefit to the damage and prejudice of said complainant. After hearing, the trial court convicted appellant of estafa and sentenced him to an indeterminate penalty of from four (4) months and one (1) day of *arresto mayor* to one (1) year and eight (8) months of *prision correccional* and to indemnify the offended party in the sum of ₱400.00 with subsidiary imprisonment in case of insolvency. The accused appealed.

Appellant assigns three errors which may be boiled down to the single issue of credibility or appreciation of the evidence.

The evidence of the prosecution tends to prove that sometime in June, 1955 appellant visited complainant in the latter's house and talked to him about his need for a firearm; that complainant said that he really needed a firearm because about one year back, his house was visited by thieves; that some days later when appellant called on

complainant again, they talked about the latter's desire to secure a firearm, appellant inquiring about complainant's properties and when told that said properties were worth only about ₱1,000.00, he offered his services to look into the status of complainant's application for homestead in the Bureau of Lands; that on the afternoon of July 6, 1955, appellant appeared again in complainant's house with a .38 caliber Colt revolver with serial No. 285703; that the revolver was delivered to complainant with certain papers (Exhibits A, A–1, B and B–1) which appellant said were the license; that appellant charged ₱400.00 for the revolver and the supposed license, which amount complainant handed to him right then and there; that in December, 1955, complainant, not knowing how to read, went to the store of Hilarion Lataquin in the public market of the municipality to show him the papers purporting to be the license for the firearm; that Lataquin told him that those papers were not a firearm license and advised him to surrender the revolver to the proper authorities; and that following such advice, complainant surrendered the revolver to the Chief of Police of Victorias, Negros Occidental.

The defense offers an entirely different version which is as follows: On January 14, 1954, complainant applied for a permit or license to possess firearms, and for that purpose, filed with the Firearms Section of the Constabulary Detachment in Victorias, Negros Occidental, an application in the prescribed form (Exhibit 2) together with the corresponding letter of complainant addressed to the Chief of the Philippine Constabulary (Exhibit 1). On said date, complainant and appellant happened to meet in the municipal building and the former asked the latter to sign as one of his witnesses or guarantors in the application for bond to guarantee the performance by complainant of his obligation as a firearm licensee. Appellant obliged complainant who was his friend and an old acquaintance and signed as one of the witnesses or guarantors, the other being Silvestre D. Ocampo, postmaster of Victorias. The signing took place inside the office of Ocampo which was located in the municipal building. Appellant and Ocampo, on that occasion, saw in the possession of complainant a revolver which he said he bought for ₱400.00 from Sgt. Tenefrancia of the Constabulary who was there also.

One of the factors that influenced the trial judge to convict appellant was the inability of the defense to assign a definite cause for complainant to accuse appellant. And another circumstance to which apparently the court attached great importance is that at the time the criminal action was instituted, Sgt. Tenefrancia was still living,

and the learned trial judge reasoned out that if the theory of the defense is true that the accused had no intervention whatsoever in the transaction except affixing his signature to the surety bond, the offended party, Celeste, would have gone after Sgt. Tenefrancia instead of after appellant. In the brief of the Solicitor General's Office, an additional reason is given to support the verdict of conviction. It states: "Besides it is inconceivable that the complainant who has reached the twilight of his life and is burdened with the weight of 86 years hanging on his shoulders, would tarnish his last days on earth with a fabricated charge against the appellant." We shall take up this point later after analyzing and weighing the evidence which, after all, should be the chief basis of any factual conclusion in the case.

First, let us consider the testimony of complainant himself. On direct-examination, he stated that at about 9:00 o'clock on June 26, 1955, appellant went to his house and upon arriving there said to him: "Sr. Celeste, to sé positivamente que usted necesita armas de fuego con licencia." In response, he said: "Si señor, efectivamente necesito armas para ladrones, porque hace un año que nos han subido ladrones." Then appellant returned some days later and inquired from complainant about the latter's properties which would justify the granting to him of a firearm license. Appellant said that since complainant had properties worth only ₱1,000.00, he would see whether he could proceed in view of the fact that complainant had a homestead. Appellant asked for the papers concerning said homestead and, upon being told they were in the Bureau of Lands, said he would go to said office to see the papers. He asked complainant to give him ₱15.00 for that particular service. On July 6, 1955, appellant again showed up at the house of complainant bringing with him a .38 caliber Colt revolver which was handed to complainant together with certain papers (Exhibits A, A–1, B and B–1) which appellant said to be the license of the gun. Complainant, on that same occasion, paid appellant ₱400.00 which the latter said would be ₱500.00, if complainant were not his townmate.

On cross-examination, complainant showed that he was badly confused as to the dates when appellant was supposed to have called at his house. In the first place, he stated, under cross-examination, that the first time he came to know and had dealings with appellant was on June 6, 1955 and that on June 27 they met at the provincial capitol; that on June 26, they had another conversation in which he said that it would not be possible for him to secure a firearm license because he had no properties worth more than ₱1,000.00 but appellant called

his attention to his having a homestead. Answering further questions on cross-examination, he stated that the second time he met appellant was on June 26, 1955 and their third meeting was on July 6.

As a whole, the story of complainant is inherently improbable. According to him, upon arriving in his house, appellant's first remark was this: "Señor Celeste, yo sé positivamente que usted necesita armas de fuego con licencia." From this, it is to be implied that they had previously talked about the matter, and yet, answering a question on cross-examination, he said that he came to know and had dealings with appellant on June 6, 1955. If such is the case, the opening statement attributed to appellant that he knew positively that complainant was in need of a licensed firearm is certainly of doubtful veracity.

Exhibits A, A–1, B and B–1 are documents relating to complainant's applications for membership in the so-called Japanese War Notes Claimants Association of the Philippines, Inc. The applications (Exhibits A–1 and B–1) bear the signatures of complainant as the applicant while Exhibits A and B are official receipts for payments made by him to the disbursing officer of the Association for "notarial and filing fees". These are the same documents which complainant said were handed to him with the revolver and which, he was told by appellant, were the license papers for the firearm. If it were true that these documents were the very ones given by appellant to complainant together with the revolver, it has not been explained by complainant how they came into the possession of appellant. We shall show later that the signatures in the applications were those of complainant.

While complainant was under cross-examination, another set of documents were shown to him by the defense namely, his application of the Constabulary for a firearm license (Exhibit 2) together with his letter accompanying it (Exhibit 1) and the corresponding application for surety bond (Exhibit 3).

He disclaimed any knowledge about all these documents (Exhibits A, A–1, B, B–1, 1, 2, and 3). He went to the extent of disowning every signature of his name in said documents. His signatures on Exhibits A–1 and B–1 were identified by Postmaster Ocampo who was familiar with his signature because he used to sign in Ocampo's presence whenever his monthly pension check from the U. S. Veterans Administration was delivered to him in the Post Office. Complainant's signatures on Exhibits 1, 2, and 3 were identified by Ocampo, presumably an unbiased and disinterested witness, and the accused both of whom saw complainant sign said documents in the Post Office on

January 14, 1955. He was ordered by the trial court to write his name several times on a piece of paper (Exhibit "D"). By comparing complainant's signatures in the above-mentioned documents with those appearing on Exhibit D the similarity is very apparent and needs no confirmation from any handwriting expert. Just why complainant totally denied having affixed his signature to any of those documents shown to him while testifying is something hard to understand. It cannot be attributed merely to a defect of memory. He failed to realize that it is much easier to believe what one sees than what one merely hears. If complainant had the temerity to deny something very obvious, how can he be expected to be honest and sincere when making statements the truth of which he knew could not be easily checked or verified. It is obvious that he wanted to hold back facts which would have cleared appellant.

Different portions of complainant's testimony was corroborated respectively by three different witnesses, namely, Gaudencio Magbanua, Hilarion Lataquin and Daniel Ligada. The first testified on the events which happened in complainant's house on July 6, 1955; the second on the discovery that the documents handed to complainant with the revolver were not a firearm license; and the third on the surrender of the revolver to the chief of police.

Let us refer briefly to the testimony of these supporting witnesses for the prosecution. Magbanua was then in the employ of complainant as a household helper. He said that at 3:00 p.m. on July 6, 1955, complainant invited him to go upstairs and drink coffee with him and while they were drinking coffee together, appellant arrived and gave to complainant some papers and then a revolver. He heard appellant say that with those papers nothing would happen to complainant. Then continuing his narration, he said that complainant immediately went to his room, opened his trunk (baul) and got five ₱20-bills and thirty ₱10-bills all of which he handed to appellant. This witness was very sure as to the date and the time and as to all that happened relative to the delivery of the revolver and the supposed license papers as well as the handing of the payment, and yet he could not remember the date when he left the service of the complainant one week afterwards to look for another job. Moreover, it strikes us as unnatural and improbable for him, a mere worker of the household, not to say houseboy, to follow complainant in going to the room and watch the latter open the trunk and withdraw money from it. It is surprising too that he could remember even the number and the denominations of the paper bills which were paid to appellant. His story is too good to inspire belief.

On his part, Hilarion Lataquin confirmed complainant's statement that the latter asked him to read the supposed license of the revolver, but when shown, while testifying Exhibits A, A–1, B and B–1, he stated that he had not seen those papers. In other words, they were not the papers shown to him by complainant. The statement, therefore, of complainant that he showed Exhibits A, A–1, B and B–1 to Lataquin and the latter's statement that these were not what were shown to him, cancel each other. True, this discrepancy does not alter the fact that the revolver in question did not have the corresponding license. It however casts doubt on the theory of the prosecution and discredits particularly the credibility of complainant. Being the less interested witness, Lataquin's testimony should prevail over that of complainant in so far as the contradiction cited is concerned.

The fourth and last witness for the prosecution was the Chief of Police of Victorias who simply corroborated complainant's declaration that the revolver in question was surrendered to him because it was not covered by a license. Relating, as it does, to a detail—the surrender of the unlicensed revolver—over which there is no dispute, his testimony need not be discussed.

Appellant Manuel Juarez denied all the declarations of complainant concerning the former's alleged visits to the latter's house. He maintained that he had never made such visits. He, however, related in a straightforward manner how on January 14, 1954 he met complainant in the company of Sgt. Tenefrancia in the office of the Postmaster of Victorias and how he signed, as a witness or guarantor of complainant, the bond filed in connection with complaint's application for a firearm license. Appellant also described how complainant signed Exhibits 1, 2, and 3 in said office in his presence and in the presence of the postmaster. He stated also that he saw the revolver in question which complainant himself told him was bought for ₱400.00 from Tenefrancia.

Besides appellant, three more witnesses testified for the defense. Prudencio Pagunsan was the firearm clerk of the PC headquarters in Bacolod City at that time. He said that he knew Tenefrancia who was his assistant then and was the firearm custodian; that sometime in January, 1954, Tenefrancia brought to him complainant's application for a firearm license; and that Tenefrancia told him of his desire to sell his revolver, the serial number of which (285703) appeared in complainant's application. The other defense witness was Sgt. Jose Sanz, who at the time of the trial was the one in charge of the Firearms Section. He said he received a subpoena for the trial of this case to bring with him the records of the application

of complainant and so he produced Exhibit 4, which was the original of complainant's letter accompanying his application; Exhibit 5, a copy of the application in the prescribed form; and Exhibit 6, a copy of the bond that was attached to the application. He identified all these documents in court. He further stated that when he assumed office in October, 1954, he began to record all the applications for firearms license and he saw that in the application of complainant, the serial number of the revolver applied for was stated and therefore he thought that complainant had already said gun in his possession. He said also that he found the folder of complainant's application not to contain the necessary recommendation or the seal or stamp, and that it was not entered in the book of firearm. What he did was to report the matter to the Provincial Commander who ordered an investigation and confiscation of the gun.

The other witness for the defense was Silvestre D. Ocampo, postmaster of Victorias since 1930. He knew, according to him, the signature of complainant because the latter used to be in his office to receive his monthly pension check from the U. S. Veterans Administration. He stated categorically that he signed the indemnity bond (Exhibit 3) after appellant had signed it in his presence. He likewise identified complainant's signatures in Exhibits A–1 and B–1. He also affirmed having seen on the same occasion the revolver in question in the possession of complainant.

On the basis of the evidence which has been very carefully examined, and after giving full allowance to the advantage enjoyed by the trial court in gauging the credibility of the witnesses whose demeanor and attitude on the witness stand it had the opportunity to observe, our minds are assailed by serious doubts as to the guilt of appellant and our conscience cannot rest at ease if we send him to jail for a crime which we are not morally certain he committed.

The fact that appellant could not conceive of any plausible specific reason why he was accused by complainant is not necessarily an indication that he is guilty. Complainant's motive might have existed only in his mind and has not been divulged to appellant or to any other person.

The fact that a person has reached the "twilight of his life" is not always a guaranty that he would tell the truth. It is also quite common that advanced age makes a person mentally dull and completely hazy about things which have happened to him and at times it weakens his resistance to outside influence. Complainant personally might not have had any rancor or grievance against appellant, yet we cannot entirely rule out the possibility that he

might have allowed himself to be an instrument of scheming third persons to lodge a false accusation. Neither can we rule out the possibility that appellant being an informer of the Constabulary, complainant might have suspected him of having something to do with the transaction between complainant and Sgt. Tenefrancia relative to the sale of the unlicensed revolver.

Finally, there is another circumstance that militates against the prosecution. The version which its evidence tends to establish is at variance with the information filed against appellant in one significant respect. While the information charges him with having, "* * * thru deceit and false representation that he possess the power and influence to acquire a duly licensed firearm, succeeded in getting the amount of ₱400.00 from the said Alberto Celeste and once in possession thereof, delivered to the latter a revolver with its supposed corresponding license * * *", what the prosecution tried to prove was that the revolver and the supposed license were handed first to Celeste before he went to his room and withdraw the money from his "baul" and gave it to appellant. Such a discrepancy between the indictment and the shaky proof of the prosecution increases the doubt as to the guilt of appellant.

Under the circumstances, we cannot make up our mind as to whether appellant is guilty or not, and giving him the benefit of the doubt, we are compelled to clear him of the charge.

Wherefore, the decision appealed from is reversed, and appellant Manuel Juarez is acquitted of the crime of estafa, with costs *de oficio*.

SO ORDERED.

Paredes, Pres. J. and *San Jose, J.*, concur.

Judgment reversed.